Supreme Court, U.S.
FILED
10-276 AUG 23 2010
OFFICE OF THE CLERK

No. 10-_____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT C. BRUNER and KATHERINE S. BRUNER, husband and wife, et al.,

Petitioners,

vs.

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida; et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Florida First District Court Of Appeal

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Circumstances of the Case

Petitioners challenge Florida's scheme to assess homestead property at the time of purchase and limit any increase to three percent (3%) a year. New citizens to the state are assessed at market value upon acquisition and bear a heavier burden than longer-term residents who benefit from a tax shelter based on the duration of their homestead status. Florida has added "portability" to this program, allowing homeowners to transfer their tax shelter to a replacement home. Thus, long-term homesteaders have a greater tax shelter for transfer purposes than recently migrated homesteaders.

I.

Under constitutional principles dealing with the "right to travel" doctrine, may a state impose a homestead property tax assessment scheme that shelters the rate of assessment durationally based on the date of purchase, thereby placing a greater tax burden on newly arrived citizens?

II.

May the state impose "portability" based on durationally accumulated tax shelter benefits, thereby enabling long-term residents to transfer greater tax shelter status to replacement residences as compared to newly arrived citizens?

LIST OF PARTIES

Petitioners

ROBERT C. BRUNER and KATHERINE S. BRUNER, husband and wife, DEBORAH E. PLITNICK, and STANLEY C. CHAMBERLIN, individually and as representatives of similarly situated persons.

Defendants

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida; DORIS MALOY, in her official capacity as Tax Collector of Leon County, Florida; LEON COUNTY, a political subdivision of the State of Florida; the LEON COUNTY SCHOOL BOARD; FRANK DESGUIN, in his official capacity as Property Appraiser of Charlotte County, Florida; VICKIE L. POTTS, in her official capacity as Tax Collector of Charlotte County, Florida; CHARLOTTE COUNTY, a political subdivision of the State of Florida; CHARLOTTE COUNTY SCHOOL BOARD; GARY NIKOLITS, in his official capacity as Property Appraiser of Palm Beach County, Florida; ANNE M. GANNON, in her official capacity as Tax Collector for Palm Beach County, Florida; PALM BEACH COUNTY, a political subdivision of the State of Florida; CITY OF NORTH PALM BEACH, a political subdivision of the State of Florida; PALM BEACH COUNTY SCHOOL BOARD and LISA ECHEVERRI, in her official capacity as Executive Director of the FLORIDA DEPARTMENT OF REVENUE; and all

named Defendants, individually and as representatives of similarly situated persons or entities.

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 6

REASONS FOR GRANTING THE PETITION 10

CONCLUSION 29

INDEX TO APPENDICES

Appendix A First District Court of Appeal Opinion 1a

Appendix B Judgment of Dismissal 7a

Appendix C Florida Supreme Court Decision. 19a

Appendix D Second Amended Complaint. 20a

Appendix E Motion for Partial Summary Judgment filed by Plaintiffs. 69a

Appendix F Affidavit of James McClave, Ph.D..... 74a

TABLE OF AUTHORITIES CITED

CASES **PAGES**

U.S. Supreme Court Cases

Attorney General of New York v. Soto-Lopez
476 U.S. 898 (1986) 16, 29

Dunn v. Blumstein
405 U.S. 330 (1972) 15

Hooper v. Bernalillo County Assessor
472 U.S. 612 (1985) 16

Memorial Hospital v. Maricopa County
415 U.S. 250 (1974) 15

Nordlinger v. Hahn
505 U.S. 1 (1992) 9, 10, 11, 24, 25

Saenz v. Roe
526 U.S. 489 (1999) 11, 20, 23, 24, 28

Shapiro v. Thompson
394 U.S. 618 (1969) 15

Zobel v. Williams
457 U.S. 55 (1982) 16, 17, 18, 20, 26

Florida Cases

Bruner v. Hartsfield
23 So. 3d 192 (Fla. 1st DCA 2009)..... 1, 10

Bruner v. Hartsfield
37 So. 3d 846 (table), 2010 WL 2079907
(Fla. May 24, 2010) 1

DeLuccio v. Havill
Florida First District Court of
Appeal Case No. 1D10-975 8

Lanning v. Pilcher
16 So. 3d 294 (Fla. 1st DCA 2009) 8

Lanning v. Pilcher
37 So. 3d 847 (table) 2010
WL 2079907 (Fla. May 24, 2010) 8

CONSTITUTIONAL PROVISIONS

U.S. Const., art. IV, §2.....2, 15, 16, 18, 20, 23

U.S. Const., amend. XIV, §1. 2

Fla. Const., art. VII, §4. 3

Fla. Const., art. VII, §6(a) 7

Florida Amendment 1(2009) 3, 7, 8, 14, 15, 26, 27, 29

Florida Save Our Homes Amendment (SOHA) . . 3, 7, 8, 11, 15, 16, 17, 26, 27, 29

STATUTES

28 U.S. §1257(a) 1

Fla. Stat. §193.155(1) (2009)..... 6

Fla. Stat. §193.155(8) (2009)..... 6

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears in the Appendix to the Petition (Pet. App. 1a), and is reported at *Bruner v. Hartsfield,* 23 So. 3d 192, (Fla. 1st DCA 2009), *rev. denied,* 37 So. 3d 846 (table) 2010 WL 2079907 (Fla. May 24, 2010). (Pet. App. 1a).

JURISDICTION

The date on which the highest state court decided this case on the merits was November 17, 2009. (Pet. App. 1a) The Florida Supreme Court denied discretionary review of this case on May 24, 2010. *Bruner v. Hartsfield*, 37 So. 3d 846 (table), 2010 WL 2079907 (Fla. May 24, 2010) (Pet. App. 19a).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a collision between the "right to travel" doctrine, which has evolved from the Privileges and Immunities Clauses of Article IV and the Fourteenth Amendment of the United States Constitution, and a residency-based and durationally weighted shelter of *ad valorem* real property taxation through an assessment scheme, grounded upon referendum amendments to the State of Florida Constitution and implemented statutorily.

The United States Constitutional provisions at issue are:

Article IV, Section 2 – U.S. Constitution

> Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Fourteenth Amendment, Section 1, U.S. Constitution

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

> citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Florida constitutional referendum amendments, commonly referred to as the Save Our Homes Amendment (SOHA), adopted effective as of January 1, 1995, and Amendment 1, adopted effective as of January 1, 2009, retroactive to January 1, 2008, have been codified in Article VII, Section 4, of the Florida Constitution (1968) as follows:

SOHA

> **SECTION 4. Taxation; assessments.**
>
> . . . .
>
> (d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

. . . .

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

Amendment 1

(8)a. A person who establishes a new homestead as of January 1, 2009, or

January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

> 2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

The implementing statutes – Fla. Stat. §193.155(1) (2009) for SOHA and Fla. Stat. §193.155(8) (2009) for Amendment 1 – do not significantly alter or expand the language of the two referenda.

STATEMENT OF THE CASE

Petitioners, all recently migrated residents and owners of Florida residences and therefore

qualified "homesteaders,"[1] brought a class action on behalf of themselves and similarly situated persons, challenging the federal constitutionality of the taxation shelter scheme created by SOHA and modified by Amendment 1. (Pet. App. 3). County property appraisers, tax collectors, and various taxing districts – counties, cities, and school districts – were named defendants in their official capacities as putative defendant class representatives of similarly situated defendants. The Executive Director of the Florida Department of Revenue also was made a party defendant.

The present case is the second proceeding in a trilogy of class action legal challenges to the above

---

[1] Article VII, Section 6, of the Florida Constitution defines a homesteader as follows:

> **SECTION 6. Homestead exemptions.--**
>
> (a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. (Emphasis added).

referenced taxation shelter scheme. The first challenge was initiated by nonresident owners of Florida residences. *See Lanning v. Pilcher*, 16 So. 3d 294, (Fla. 1st DCA 2009), rev. denied 37 So. 3d 847 (table) 2010 WL 2160020 (Fla. May 24, 2010). The Florida Supreme Court denied review in *Lanning*; efforts to file a Petition for Writ of Certiorari in that case are ongoing. The *Lanning* case challenges only the tax shelter scheme as originated with SOHA and its implementing statute.

As noted, the present case followed *Lanning* and was instituted by recently migrated resident homesteaders to Florida. The third case is identical to *Lanning* except that the class plaintiffs challenge both SOHA and Amendment 1 (portability) and the combined impact of these provisions. That proceeding is styled *DeLuccio v. Havill* and is presently pending before the Florida First District Court of Appeal, Case No. 1D10-975. The taxpayer parties in these cases requested the Florida appellate tribunal to consolidate these matters for appellate purposes. But this relief was opposed by the various defendants and denied by the Florida First District Court of Appeal.

Petitioners in the present case filed a motion for partial summary judgment accompanied by the affidavit of James McClave, a practicing Ph.D. statistician. (Pet. App. 69a; 74a). The trial court granted defendants' motion to dismiss without considering Petitioners' motion for partial summary

judgment. (Pet. App. 8a). Petitioners' appeal to the Florida First District Court of Appeal was denied (Pet. App. 1a), followed by the Florida Supreme Court's refusal to grant review. (Pet. App. 19a).

As a basis for its dismissal with prejudice, the trial court relied on this Court's decision in *Nordlinger v. Hahn,* 505 U.S. 1 (1992), and stated:

> *Nordlinger* clearly established the principle that a state legislature's interest in "neighborhood preservation, continuity and stability" provided a rational basis for treating new and older residents differently in their tax assessments. *Nordlinger,* 505 U.S. at 12-13.

(Pet. App. 13a).

In affirming the trial court's dismissal, the appellate court concluded:

> More particularly, appellants have challenged the constitutionality of (i) the "Save Our Homes Amendment" (SOHA) which placed a cap on the amount the assessed value of homestead property could be increased annually, and (ii) Amendment 1, adopted by popular referendum in 2008, which, among other things, made a portion of a homesteader's existing exemption portable to newly-

> purchased homestead property. Art. VII, § 4(d)(1) and (8), Fla. Const. Appellants argue that these amendments violate several federal constitutional provisions.
>
> This court has already considered and rejected virtually identical constitutional challenges to SOHA in *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000), and *Lanning v. Pilcher*, 16 So. 3d 294 (Fla. 1st DCA 2009). The holdings in *Reinish* and *Lanning* that section 4, Article VII is not unconstitutional for the reasons claimed are not changed by the passage of Amendment 1.
>
> Accordingly, we affirm the final order of dismissal.

Bruner v. Hartsfield et al, 23 So. 3d 192, 194 (Fla. 1st DCA 2009); (emphasis added; Pet. App. 5a; 6a).

REASONS FOR GRANTING THE PETITION

The Court should grant the Petition because this case presents the precise "right-to-travel" issue that, because of the absence of necessary standing, the Court declined to consider in *Nordlinger*. Here, the Petitioners are newly migrated resident homesteaders in Florida and, unlike the plaintiff in *Nordlinger,* do not need to borrow or utilize a

vicarious standing basis to frame the right-to-travel claim which was eschewed in *Nordlinger*.

Additionally, the Florida courts have misconstrued the holding in *Nordlinger*. In entering its ruling affirming the trial court's dismissal, the Florida appellate court completely ignored the core principles of the "right to travel" doctrine most recently addressed by this Court in *Saenz v. Roe,* 526 U.S. 489 (1999). Moreover, in ignoring the "strict scrutiny" standard for testing state entitlements under the "right to travel" doctrine, the Florida courts have substituted a "rational basis" scrutiny standard, departing from settled principles of federal constitutional law.

Briefly, SOHA caps the annual just valuation assessment increases for Florida homesteaders at three percent (3%), or the actual increase in the Consumer Price Index (CPI), whichever is less. Enacted in early 1994, effective January 1, 1995, the SOHA cap did not play a noticeable part in creating a significant tax shelter effect for long–term homesteaders until 1999, the beginning of the real estate boom. From 1999 through 2007, the shelter accumulation or build-up disparity favoring long-term homesteaders *vis a vis* nonresidents and newly migrated Florida residents became startling, if not eye-popping. These disparities are reflected in the Second Amended Complaint:

56. As a result of the disparate and durationally weighted tax shelter benefits accruing by operation of SOHA to long-term homesteaders, Plaintiffs and the Plaintiff Class Members have paid, and without prospective relief granted herein, will continue to pay *ad valorem* real property taxes on their homestead properties which are well in excess of the taxes assessed upon and paid by long-term homesteaders owning similarly or comparably valued homesteads. In particular:

> a. For the four years preceding their purchase of their residential property, the taxes on the Bruner parcel were as follows: $5,819.31 in 2003, $5,918.39 in 2004, $5,939.97 in 2005, and $5,830.40 in 2006. In the first year that the Bruners took homestead on the property the assessed amount of taxes paid were [*sic*] $8,102.67, a difference of $2,273.27 for an increase of 39% over the prior year. SOHA had built in a 39% tax savings for the prior homesteaders in perpetuity based solely on the length of homestead residence. During the four years prior to the Bruner's [*sic*] purchasing their Florida residence the taxes only went up from $5,819.31 to $5,830.40, an increase of $11.09 over a four year period or .2% per year. In contrast, the year the Bruners purchased the same residence the taxes went

up 39%. . . .

b. Stanley Chamberlin's taxes in 2000, when he was a nonresident owner of the property were $8,211.65. By 2006, the assessed property taxes had gone up to $23,356.42 before he became a Florida resident and declared homestead in 2007. His taxes in 2007 were $22,829.66. Taxes on the parcel went up almost 300% from 2000 to 2006. During the same period of time, if he had been a homestead resident under SOHA's cap and the shelter generated thereby, Chamberlin's taxes would have only increased 19.40% (3% compounded yearly). . . .

c. Deborah Plitnick acquired her homestead parcel in 2004. For the four-year period prior to her acquisition, the parcel had been assessed taxes under SOHA's shelter in the amount of $1,879 for 2003, $1,747 for 2002, $1,779 for 2001, $1,833 for 2000. In 2005, her first declared homestead assessment, Plitnick paid taxes in the amount of $4,421.53, a difference of $2,503.60, or 131% over the prior year. So for the four years prior to acquisition by Plitnick, the taxes on the parcel, by operation of the SOHA shelter and the mitigated millage rates, went from $1,833.52 to $1,879.99, an increase of $49.97 over a

> four-year period for an increase of 0.6% per year on an annualized basis. . . . (Pet. App. 44a-46a).

The origins and dimensions of such disparities are referenced in the affidavit of expert McClave. (Pet. App. 77a-91a).

Beginning in 2009, Amendment 1 injected portability into the Florida tax shelter scheme, thereby enabling Florida resident homesteaders to transfer the bulk of their tax shelter build-up to newly acquired Florida replacement residences. As a result, recently migrated Florida homesteaders with small shelter build-ups, plus nonresidents with no shelter build-ups whatsoever, were disparately disadvantaged competitively in the residential marketplace in Florida. In effect, long-time homesteaders enjoyed a significant competitive edge in the marketplace over recently migrated homesteaders in their efforts to acquire replacement residences.[2]

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[2] Before the legislature approved the Joint Resolution that embodied Amendment 1 and portability, it commissioned an extensive study that included a legal analysis by Professor Walter Hellerstein, the noted expert on state and local taxation (hhtp://edr.state.fl.us/property%20tax%20study/Ad%20Valorem%2Oiterim%20report.pfd). Despite the pointed warnings of constitutional problems in this analysis, the legislature approved the "portability" amendment.

In light of these facts, Petitioners submit that the following principles control resolution of the fundamental constitutional issues presented.

A. SOHA and Amendment 1 Offend the "Right To Travel" Doctrine of the Privileges and Immunities Clauses of the United States Constitution.

1. Durationally Structured Benefits Conferred by States on Their Resident Citizens Based on the Length of Their Residency Status Are Constitutionally Suspect.

This Court's decisions demonstrate that all citizens are entitled to move from one state to another and to enjoy the full benefits of citizenship in their new state without discrimination. *Shapiro v. Thompson,* 394 U.S. 618 (1969) (striking down state laws that set up residency requirements for the receipt of welfare payments and noting the " constitutional right to travel from one state to another . . . occupies a position fundamental to the concept of our Federal Union . . . a right that has been firmly established and repeatedly recognized") (*Id.* at 630); *Dunn v. Blumstein,* 405 U.S. 330 (1972) (striking lengthy residence as a precondition to voting); *Memorial Hospital v. Maricopa County,* 415 U.S. 250 (1974) (residency requirements for medical

care, other than emergency medical care, were stricken); *Zobel v. Williams,* 457 U.S. 55 (1982) (Alaska's program geared to distributing oil bounty dividends based on the length of residency was held not to pass muster under the minimum rational basis scrutiny required by equal protection; but a concurring opinion by Justice Brennan, joined by three justices, shared Justice O'Connor's concurring view that the Privilege and Immunities Clause of Art. IV, which harbored the constitutional "right to travel doctrine," was also offended); *Hooper v. Bernalillo County Assessor,* 472 U.S. 612 (1985) (finding invalid on "right to travel" grounds a New Mexico property tax exemption for Vietnam veterans, depending on when they arrived in the state); and *Attorney General of New York v. Soto-Lopez,* 476 U.S. 898 (1986) (invalidated on "right-to-travel" grounds a state statute which offered civil service employment preference only to veterans who were state residents at the time of their induction into the military).

The oil dividend bounty scheme in *Zobel* is similar to SOHA's tax shelter provision. Both are products of the duration of state residency attained by the recipient; that is, the duration of state residency is a factor in determining the magnitude of the entitlement or benefit conferred in both schemes.

In particular, the extent or amount of the oil bounty in *Zobel* is a direct product of the length of time the recipient has been a resident of Alaska. In

Florida, the extent of SOHA's tax shelter is a product of the length of time the recipient has been a home-owning resident in Florida and the frequency that inflation in market prices of Florida residential structures exceeds three percent (3%) annually. Under both schemes, recently migrated residents do not acquire the magnitude in benefits conferred upon long-term residents and newer taxpayers are relegated to the status of second class citizens.

As noted above, the majority opinion in *Zobel* found that the residency disparity offended even the minimum "rational basis" scrutiny required by The Equal Protection Clause. Justice Brennan, joined by three Justices, filed a concurring opinion in which he agreed with the separate concurring opinion of Justice O'Connor:

> I agree with JUSTICE O'CONNOR that these more fundamental defects in the Alaska dividend-distribution law are, in part, reflected in what has come to be called the "right to travel." That right — or, more precisely, the federal interest in free interstate migration — is clearly, though indirectly, affected by the Alaska dividend-distribution law, and this threat to free interstate migration provides an independent rationale for holding that law unconstitutional.

Id. at 66.

Concluding, Justice Brennan noted:

> But a State cannot *compound* its offer of direct benefits in the inventive manner exemplified by the Alaska distribution scheme: For if each State were free to reward its citizens incrementally for their years of residence, so that a citizen leaving one State would thereby forfeit his accrued seniority, only to have to begin building such seniority again in his new State of residence, then the mobility so essential to the economic progress of our Nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive.

Id. at 68 (emphasis original).

Justice O'Connor's concurring opinion in *Zobel* marked the fifth vote that the "right to travel" doctrine was embedded in the Privileges and Immunities Clause of Art. IV of the Constitution:

> Alaska's distribution plan distinguishes between long-term residents and recent arrivals. Stripped to its essentials, the plan denies non-Alaskans settling in the State the same privileges afforded longer term residents. The Privileges and Immunities Clause of Art. IV, which

> guarantees "[t]he Citizens of each State . . . all Privileges and Immunities of Citizens in the several States," addresses just this type of discrimination. Accordingly, I would measure Alaska's scheme against the principles implementing the Privileges and Immunities Clause. In addition to resolving the particular problems raised by Alaska's scheme, this analysis supplies a needed foundation for many of the "right to travel" claims discussed in the Court's prior opinions.

Id. at 73, 74.

Speaking graphically of the offensive nature of Alaska's scheme, Justice O'Connor observed:

> Alaska's scheme classifies citizens on the basis of their former residential status, imposing a relative burden on those who migrated to the State after 1959. Residents who arrived in Alaska after that date have a less valuable citizenship right than do the oldtimers who preceded them. Citizens who arrive in the State tomorrow will receive an even smaller claim on Alaska's resources. The fact that this discrimination unfolds after the nonresident establishes residency does not insulate Alaska's scheme from scrutiny under the Privileges and Immunities

> Clause. Each group of citizens who migrated to Alaska in the past, or chooses to move there in the future, lives in the State on less favorable terms than those who arrived earlier. The circumstance that some of the disfavored citizens already live in Alaska does not negate the fact that "the citizen of State A who ventures into [Alaska]" to establish a home labors under a continuous disability.

Id. at 75.

2. This Court's Decision in *Saenz v. Roe* Clarified the "Right To Travel" Doctrine as a Product of the Privileges and Immunities Clauses and Held That the Standard for Reviewing Compliance With the Doctrine Was at Least Equal to "Strict Scrutiny."

Some seventeen years after *Zobel* was decided, this Court issued its opinion in *Saenz v. Roe,* 526 U.S. 489 (1999).[3] *Saenz* analyzes this Court's decisions:

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[3] In *Saenz*, California sought to reduce its welfare benefit fiscal exposure by limiting benefits for new residents, for the first year of their welfare qualification, to the benefits they would have received in the state of their prior residence.

The "right to travel" discussed in our cases embraces at least three different components. It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second state *and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.*

. . . .

. . . . What is at issue in this case, then, is the third aspect of the right to travel – the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State. That right is protected not only by the new arrival's status as a state citizen, but also by her status as a citizen of the United States. That additional source of protection is plainly identified in the opening words of the Fourteenth Amendment:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall

> make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . ."
>
> . . . .

Despite fundamentally differing views concerning the coverage of the Privileges and Immunities Clause of the Fourteenth Amendment, most notably expressed in the majority and dissenting opinions in the *Slaughter-House Cases*, 16 Wall. 36 (1873), it has always been common ground that this Clause protects the third component of the right to travel. Writing for the majority in the *Slaughter-House Cases*, Justice Miller explained that one of the privileges conferred by this Clause "is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona fide* residence therein, with the same rights as other citizens of that State." *Id.*, at 80. Justice Bradley, in dissent, used even stronger language to make the same point:

> "The states have not now, if they ever had, any power to restrict their citizenship to any classes or persons. *A citizen of the United States has a perfect constitutional right to go to and reside in any State he chooses, and to claim citizenship therein, and*

> *an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in that right. He is not bound to cringe to any superior, or to pray for any act of grace, as a means of enjoying all the right and privileges enjoyed by other citizens."* *Id.* at 112-113.

Id. at 500 - 504 (footnotes omitted; emphases added).

Embodied in the "right to travel" is the right to "equality of taxation"[4] between newly migrated and existing citizens or residents of a state. This was considered a fundamental right at the time the Privileges and Immunities Clause was made a part of the 14th Amendment.

The present case likewise involves the third element of the "right to travel" doctrine announced in *Saenz.* Hindsight reflects that the above-referenced "right-to-travel" cases leading up to *Saenz*

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[4] In his *Saenz* dissent, Justice Thomas commented that the Slaughter-House Cases cast some doubt on the viability of the clause and suggested an analysis as to the intended meaning of the clause in the Fourteenth Amendment. He noted that Justice Bushrod Washington's opinion in *Corfield v. Coryell,* 6 F. Cas 546 (CCED Pa. 1825) was relied on by those who drafted the Amendment. Significantly, Justice Washington's opinion identified those rights that citizens should be able to claim when moving from state to state, including the right to "an exemption from higher taxes or impositions than are paid by the other citizens of the State." *Corfield* at 551-552.

also involved the same third element. As for the level of scrutiny for testing compliance with this element, *Saenz* noted:

> That newly arrived citizens "have two political capacities, one state and one federal," adds special force to their claim that they have the same rights as others who share their citizenship. *Neither mere rationality nor some intermediate standard of review should be used to judge the constitutionality of a state rule that discriminates against some of its citizens because they have been domiciled in the State for less than a year. The appropriate standard may be more categorical than that articulated in Shapiro, see supra, at 8-9, but is surely no less strict.*

Id. at 49 (emphasis added).

3. The Florida Courts Erroneously Relied Upon *Nordlinger* and Applied a Minimum "Rational Basis" Review Standard Rather Than a More Stringent Scrutiny.

After *Saenz,* there can be no doubt that overriding federal constitutional principles require state benefits or entitlements which are grounded upon length or duration of residency to be measured and justified by a level of scrutiny exceeding

"rational basis" inquiry. The courts below failed to apply this test.

This Court's decision in *Nordlinger* did not involve a "right to travel" issue; rather, it was decided on a "rational basis" to sustain minimum scrutiny under the constriction of The Equal Protection Clause. Indeed, when the *Nordlinger* plaintiff sought to raise a "right to travel" issue, this Court explicitly rejected the claim because plaintiff's lack of standing prohibited her from asserting this issue.[5]

Minimally, therefore, this Court should grant jurisdiction to review the propriety of the standard of review applied by the Florida courts. Millions, if not billions, of dollars in disparate tax burdens going forward[6] hang in the balance. Unless measured and

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[5] "This Court's prudential standing principles impose a 'general prohibition on a litigant's raising another person's legal rights.' Petitioner has not identified any obstacle preventing others who wish to travel or settle in California from asserting claims on their own behalf, nor has she shown any special relationship with those whose rights she seeks to assert, such that we might overlook this prudential limitation. Accordingly, petitioner may not assert the constitutional right to travel as a basis for heightened review." *Nordlinger, supra* at 11 (citations omitted).

[6] Besides prospective relief, Petitioners understand that any claim for retrospective relief will be determined based on whether Florida's non-claim statute, §194.171 Fla. Stat. (2009), provides procedural safeguards in the form of a pre-deprivation process for aggrieved taxpayers as required by *McKesson Corp. v. Florida Alcohol & Tobacco Div.*, 496 U.S. 18, 37 (1990).

justified by the appropriate standard of judicial scrutiny, such durational disparity will continue to mark recently migrated Florida residents, *vis a vis* long-term residents, as second-class or inferior citizens in terms of the extent and magnitude of tax assessment shelters enjoyed by them with respect to their Florida homes.

B. Strict Scrutiny Under the "Right to Travel" Doctrine Requires Proof by the State That the Regulation at Issue Is Necessary to Effectuate a Compelling Public Purpose That Can Not Be Achieved by Less Burdensome Means.

Admittedly, Florida's SOHA and Amendment 1 (portability) shelter scheme is not a typical durational residency regulatory mechanism where, after an initial waiting or threshold residency period, the newly migrated resident is elevated to the same level as the long-term resident.

Rather, Florida's tax shelter scheme, like the oil dividend bounty scheme in *Zobel,* embraces an approach whereby the initial durational residency disparity becomes permanent, forever fixing the scope of the benefit bestowed. In *Zobel,* a newly migrated resident never could catch up with and equalize the oil bounty dividend or benefit he or she received compared to the oil dividend conferred upon

long-term residents. In Florida, assuming recurring annual real estate inflation above three percent (3%) per annum, a newly migrated homesteader never will catch up with or equalize his tax shelter build-up with the cumulative shelter benefits enjoyed by long-term residents. Assuming recurring inflation greater than three percent (3%) per year (as alleged in the complaint), each newly migrated resident to Florida who becomes a homesteader will enjoy a less-favored tax shelter benefit than that enjoyed by residents who previously migrated to Florida and became homesteaders. Under such circumstances, the scope of the cumulative shelter benefits are forever disparate.

Even in a declining real estate market, the disparities produced by the real estate boom (which ballooned the shelter benefits created by SOHA) will remain and the disparate tax shelter transfer entitlement embraced by the portability feature of Amendment 1 will never disappear.

Petitioners are aware of no compelling public purposes that justify such permanent disparity.

Assume Florida perceived the need for an economic crutch to ensure that a Florida homesteader has protection against the risk of rising inflation and *ad valorem* taxation escalation exceeding the homeowner's realistic prospect for growth in earning capacity. Under such circumstances, why should a newly migrated

resident warrant less economic protection than a long-term resident?

Even if Florida could assert a compelling justification for such durational residency disparity, undoubtedly the same public policy or goals could be achieved by a methodology which simply eliminated the durational disparity altogether. For example, Florida's shelter scheme could be designed to function in a site-specific acquisition manner. Thus, for example, the regulation might prescribe that so long as a residential structure was utilized as a homestead, the homesteader as user and taxpayer would be entitled to ignore, for tax assessment purposes, all market value appreciation of the structure in excess of three percent (3%) per year from the commencement date of the scheme, or the construction date of the structure. This transparent scheme is inherently portable. Thus, a homesteader could sell his existing residence and replace it with another, with the replacement residence qualifying for a tax assessment status or basis which disregards all market-oriented assessment value that is attributable to annual inflation in excess of three percent (3%) annually from the commencement of the scheme or construction date of the structure.

Invoking the principles of *Saenz,* petitioners submit that an even-handed administrative scheme is readily available to accomplish whatever public policy or purpose Florida might advance as compelling justification for the assessment

exemption methodology employed by SOHA and Amendment 1. Under such circumstances, the Court should apply the principle announced in *Attorney General of New York v. Soto-Lopez,* 476 U.S. 898 (1986):

> As we held in *Dunn:* "[I]f there are other, reasonable ways to achieve [a compelling state purpose] with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose `less drastic means.'" Because New York could accomplish its purposes without penalizing the right to migrate by awarding special credits to all qualified veterans, the State is not free to promote its interests through a preference system that incorporates a prior residence requirement.

Id. at 909, 901 (citations omitted; brackets in original).

CONCLUSION

For the foregoing reasons, Petitioners request that the Court issue its writ of certiorari to the Florida First District Court of Appeal.

Respectfully submitted,

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APPENDIX A

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

ROBERT C. BRUNER and **KATHERINE S. BRUNER,** husband and wife, **DEBORAH E. PLITNICK,** and **STANLEY C. CHAMBERLIN,** individually and as representatives of similarly situated persons,

Appellants/Cross Appellees,

v. CASE NO. 1D08-5524

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida; **DORIS MALOY,** in her official capacity as Tax Collector of Leon County, Florida; **LEON COUNTY,** a political subdivision of the State of Florida; the **LEON COUNTY SCHOOL BOARD**; **FRANK DESGUIN,** in his official capacity as Property Appraiser of Charlotte County, Florida; **VICKI L. POTTS**, in her official capacity as Tax Collector of Charlotte County, Florida; **CHARLOTTE COUNTY,** a political Subdivision of the State of Florida; **CHARLOTTE COUNTY SCHOOL**

BOARD, GARY NIKOLITS, in his official capacity as Property Appraiser of Palm Beach County, Florida; **ANNE M. GANNON,** in her official capacity as Tax Collector for Palm Beach County, Florida; **CITY OF NORTH PALM BEACH,** a political subdivision of the State of Florida; **PALM BEACH COUNTY,** a political subdivision of the State of Florida; **PALM BEACH COUNTY SCHOOL BOARD** and **LISA ECHEVERRI,** in her official capacity as Executive Director of the **FLORIDA DEPARTMENT OF REVENUE;** and all named Defendants, individually and as representatives of similarly situated persons or entities,

Appellees/Cross Appellants.

No. 1D08-5524

May 11, 2009

Opinion Filed November 17, 2009.

An appeal and cross appeal from the Circuit Court for Leon County.
Charles A. Francis, Judge

Talbot D'Alemberte of D'Alemberte & Palmer, PLLC, Tallahassee; Marsha L. Lyons, and Douglas S. Lyons of Lyons & Farrar, P.A., Tallahassee; William C.

Owen of William C. Owen, LLC, Tallahassee; James G. Feiber,, Jr., of Salter, Feiber, Murphy, Hutson & Menet, P.A., Gainesville; and William Slaughter of Haskell, Slaughter, Young & Rediker, LLC, Birmingham, Alabama, for Appellants/Cross Appellees.

Bill McCollum, Attorney general, Scott D. Makar, Solicitor general, Timothy D. Osterhaus, Deputy Solicitor General, Joseph C. Mellichamp, III, Special Counsel, and Jarrell L. Murchison, Assistant Attorney General, Tallahassee, and C.B. Upton of Arnstein & Lehr, LLP, Tampa, for Appelleee/Cross-Appellant Lisa Escheverri, in her individual and official capacities.

Gregory T. Stewart, Harry F. Chiles, and Carly J. Schrader of Nabors, Giblin & Nickerson, P.A., Tallahassee, for Appellees Leon County, Leon County School Board, and Charlotte County School Board.

E. Bruce Johnson and Tamara M. Scrudders of Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., Fort Lauderdale, for Appellee Village of North Palm Beach.

Daniel E. Gallagher, Charlotte County Attorney's Office, for Appellee Charlotte County.

James D. Gordon III and Brian M. Beason of Wilkins Frolich, P.A., Port Charlotte, for Appellee Vicki L. Potts, Charlotte County Tax Collector.

John L. Polk, Punta Gorda, for Appellee Frank Desguin in his official capacity as Property Appraiser of Charlotte County.

Michael R. McKinley and John L. Wideikis of McKinley, Ittersagen, Gunderson, Berntsson & Wideikis, P.A., Port Charlotte, for Appellee Charlotte County School Board.

J. Jeffry Wahlen, Ausley & McMullen, Tallahassee, for Appellee Leon County School Board.

Alice D. Hardy for Appellee Doris Maloy, Leon County Tax Collector.

Robert J. Sniffen, Todd D. Engelhardt and J. David Marsey of the Sniffen Law Firm, P.A., Tallahassee, for Appellee Bert Hartsfield, Property Appraiser of Leon County.

James M. Brako, Office of the Tax Collector, West Palm Beach, for Appelleee Anne M. Gannon, Palm Beach County Tax Collector.

Jay R. Jacknin and Jeffery M. Clyman for Appellee Gary R. Nikolits, Property Appraiser for Palm Beach County.

Andrew M. Pelino, Assistant County Attorney, for Appellee Palm Beach County.

Gerald A. Williams, Chief Counsel, Robert Glassman, and Randall D., Burks, Office of the Chief Counsel, for Appellee School Board of Palm Beach County.

PER CURIAM.

Appellants seek reversal of the final order which dismissed with prejudice their second amended complaint challenging the constitutionality of certain portions of section 4, Article VII of the Florida Constitution. More particularly, appellants have challenged the constitutionality of (i) the "Save Our Homes Amendment" (SOHA) which placed a cap on the amount of the assessed value of homestead property could be increased annually, and (ii) Amendment 1, adopted by popular referendum in 2008, which, among other things, made a portion of a homesteader's existing exemption portable to newly-purchased homestead property. Art. VII, §4(c)(1) and (8), Fla. Const. Appellants argue that these amendments violate several federal constitutional provisions.

This court has already considered and rejected virtually identical constitutional challenges to SOHA in Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000), and Lanning v. Pilcher, 16 So. 3d 294 (Fla. 1st DCA 2009). The holdings in Reinish and Lanning

that section 4, Article VII is not unconstitutional for the reasons claimed are not changed by the passage of Amendment 1.

Accordingly, we affirm the final order of dismissal.

As for the issue raised on cross-appeal, that the trial court erred in concluding it had subject matter jurisdiction despite appellants/cross-appellees' failure to comply with section 194.171(1), Florida Statutes, this issue is governed by Lanning, 16 So. 3d at 296-97. Pursuant to that decision, we affirm the issue raised on cross-appeal.

The appeal and cross-appeal are AFFIRMED.

VAN NORTWICK, and PADOVANO, JJ., BROWNING, JR., EDWIN B., SENIOR JUDGE CONCUR.

APPENDIX B

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

ROBERT C. BRUNER and **KATHERINE S. BRUNER**, husband and wife, **DEBORAH E. PLITNICK**, and **STANLEY C. CHAMBERLIN**, individually and as representatives of similarly situated persons,

Plaintiffs,

v. **CASE NO. 07-CA-3247**

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida; **DORIS MALOY**, in her official capacity as Tax Collector of Leon County, Florida; **LEON COUNTY**, a political subdivision of the State of Florida; the **LEON COUNTY SCHOOL BOARD**; **FRANK DESGUIN**, in his official capacity as Property Appraiser of Charlotte County, Florida; **VICKI L. POTTS**, in her official capacity as Tax Collector of Charlotte County, Florida; **CHARLOTTE COUNTY**, a political Subdivision of the State of Florida;

CHARLOTTE COUNTY SCHOOL BOARD, GARY NIKOLITS, in his official capacity as Property Appraiser of Palm Beach County, Florida; **ANNE M. GANNON,** in her official capacity as Tax Collector for Palm Beach County, Florida; **CITY OF NORTH PALM BEACH,** a political subdivision of the State of Florida; **PALM BEACH COUNTY,** a political subdivision of the State of Florida; **PALM BEACH COUNTY SCHOOL BOARD** and **LISA ECHEVERRI,** in her official capacity as Executive Director of the **FLORIDA DEPARTMENT OF REVENUE;** and all named Defendants, individually and as representatives of similarly situated persons or entities,

Defendants.

FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE

THIS CAUSE was heard by the Court upon the motions to dismiss, motions to strike and motions for judgment on the pleadings filed by various Defendants directed to the Second Amended Complaint.

Plaintiffs Robert C. Bruner and Katherine S. Bruner, Deborah E. Plitnick and Stanley C. Chamberlain have instituted this action, and are

seeking class action status, challenging the constitutionality of Florida's Save Our Homes Amendment contained in Section 4, Article VII of the Florida Constitution, including Amendment 1 approved January 29, 2008, and its implementing statutory scheme contained in Section 193.155, Florida Statutes (herein collectively referred to as "SOHA"). Plaintiffs claim that SOHA violates Section 2, Article I of the Florida Constitution, the Privileges and Immunities Clauses of the Fourth and Fourteenth Amendments of the United States Constitution, specifically the right to travel component, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Plaintiffs seek Declaratory and Supplemental Retroactive Relief in Count I, Prospective Relief in Count II and relied under 42 U.S.C. §1983 in Count III of the Second Amended Complaint.

The Second Amended Complaint contained allegations that raised possible questions as to whether the Defendants Bert Hartsfield, Doris Maloy, Frank Desguin, Vicki Potts, Gary Nikolits, Ann Gannon and Lisa Echeverri were being sued as were being sued as individuals, as well as in their official capacities. This issue was resolved at the hearing held in this cause and by the resulting Final Judgment of Dismissal with Prejudice as to Individual Capacity Claims entered by the Court on June 13, 2008.

Having considered the various motions and memoranda, the arguments of counsel and being otherwise fully advised in the premises, the Court finds and concludes, for the reasons as set forth herein, that Plaintiffs are not entitled to any of the relief requested on any theory presented and that Defendants Bert Hartsfield, Doris Maloy, Frank Desguin, Vicki Potts, Gary Nikolits, Ann Gannon ad Lisa Echeverri in their respective official capacities, as well as the Defendants Leon County, Leon County School Board, Charlotte County, Charlotte County School Board, City of North Palm Beach, Palm Beach County, and Palm Beach County School Board, are entitled to have this action dismissed with prejudice.

Jurisdiction

All of the Plaintiffs are residents of Florida and have qualified for the benefits of homestead status on their respective homestead properties. The essence of their complaint if that "SOHA has created a durationally weighted ad valorem tax system, which it tilted unfairly so as to confer a grossly disproportionate economic disparity in benefits for long-term homestead property owners ***solely based on their term of residency*** (emphasis added)." (Second Amended Complaint at ¶4)

Various Defendants contend that Plaintiffs are challenging the legality of their tax assessments and seek a refund of taxes paid for the previous four

years, or alternative relief, and therefore this Court does not have jurisdiction to entertain this action because Plaintiffs have failed to file the same within the sixty-day time period prescribed pursuant to Section 194.171, Florida Statutes. They rely on the decisions in *Ward v. Brown,* 894 So. 2d 811 (Fla. 2004) and *Cason v. Dept. of Management Services,* 944 So. 2d 306 (Fla. 2006). Plaintiffs respond that this action is a constitutional challenge to the taxing scheme and is controlled by the ruling in *Reinish v. Clark,* 765 So. 2d 197 (Fla. 1st DCA 2000). Plaintiffs also argue that Circuit Judge John C. Cooper's ruling in another case previously decided in this circuit supports their position and it dispositive. *See Lanning, et al. v. Pilcher,* Case No. 37-2007-CA-000582.

It is true that the Supreme Court decisions relief upon by Defendants contain language which would appear to support Defendants' contention. In *Ward,* the Court specifically stated:

> We hold that the mandatory sixty-day provision of section 194.171(1), Florida Statutes, applies broadly to taxpayers' actions challenging the assessment of taxes against their property *regardless of the legal basis of the challenge* (emphasis supplied).

Ward, at 812.

However, in that opinion, the Court affirmed the decision form the First District Court of Appeal in *Ward v. Brown,* 892 So. 2d 1059 (Fla. 1st DCA 2003). *Ward* involved a decision of the property appraiser on the classification of property, and the appropriate statutory period available to the taxpayer to challenge the same. It was not a constitutional challenge as was involved in *Reinish. Cason* involved a decision of the property appraiser to deny an exemption from taxes, and the appropriate statutory period available to the taxpayer to challenge the same. Again, the case did not concern a constitutional challenge. The Court is bound by the decision in *Reinish,* and finds that it does have jurisdiction over the subject matter of this action to the extent the Plaintiffs request a declaration as to the constitutionality of SOHA.

Constitutionality of SOHA

The essence of Plaintiffs' constitutional challenge is the contention that the disproportionate share of the ad valorem tax burden placed on them is "solely based on their term of residency." (Second Amendment Complaint at ¶4). Plaintiffs have all migrated to Florida, become permanent residents of Florida, and each have qualified for and accepted the benefits of the SOHA scheme. As to any claim by the Plaintiffs that SOHA violated the identified provisions of the Constitution of the United States due to their residency status, the Court finds that the rulings of the United State Supreme Court in

Nordlinger v. Hahn, 505 U.S. 1 (1972) and the Florida First District Court of Appeal in *Reinish, supra,* to be applicable and dispositive of such claims. Although the issue in *Reinish* was the unavailability of the homestead exemption to nonresidents and the unequal treatment of homestead and nonhomestead property, the rationale of the decision is equally applicable to the SOHA provisions challenged in this proceeding. *Nordlinger* clearly established the principle that a state legislature's interest in "neighborhood preservation, continuity and stability" provided a rational basis for treating new and older residents differently in their tax assessments. *Nordlinger,* 505 U.S. at 12-13.

In *Reinish*, the Court, in discussing the homestead exemption, stated:

> The exemption is reasonable in effect. It is closely and substantially related to the State's valid objective to promote and protect taxpayer's financial ability to purchase and maintain the primary shelter. This purpose constitutes a substantial justification totally unrelated to state residency.

Reinish, at 210.

Applying the same principles in this case, the court finds the protections contained in SOHA have a rational and legitimate basis that is unrelated to

residency. Indeed, the protections contained in SOHA apply to all citizens regardless of the length of time Florida has been his or her residence. In other words, a resident is provided the same protection whether the resident is acquiring the homestead after recently migrating from another state or is a resident born and raised in Florida acquiring a homestead for the first time. Each starts off on the same footing, and the protections against tax increases are the same based upon market conditions and the value of the property as determined by appraisal and assessment from year to year. The constitutional protections adopted by the citizens of this State, including the portability provisions of Amendment 1 that were adopted while all Plaintiffs were residents of this State, and the legislative policy implementing such constitutional protections to foster long-term stability of neighborhoods and homestead are not violative of Section 2, Article I of the Florida Constitution, the Privileges and Immunities Clauses of the Fourth and Fourteenth Amendments of the United States Constitution, specifically the right to travel component, the Equal protection Clause of the Fourteenth Amendment of the United States Constitution. *Nordlinger v. Hahn,* 505 U.S. 1 (1992); *Reinish v. Clark,* 765 So. 2d 197 (Fla. 1st DCA 2000).

42 U.S.C. §1983 Claims

Plaintiffs allege that Defendants have been, and will continue to be, unjustly enriched by the

enforcement of the SOHA provisions of Florida's taxing scheme and that they will continue to violate Plaintiffs' constitutional rights by virtue of such enforcement. By virtue of the Final Judgment of Dismissal with Prejudice as to Individual Capacity Claims entered by this Court on June 13, 2008, this Court has previously ruled that the Defendants had no individual liability concerning any of the Plaintiffs' claims. In light of this Court's determination that SOHA is not violative of the Florida Constitution or the United States Constitution, Plaintiffs' claims pursuant to Count III are moot.

Additionally, Plaintiffs acknowledge in paragraph 82 of the Second Amended Complaint that the cause of action alleged in Count III is only applicable if there is no adequate remedy under Florida law. Defendants contend, and this Court agrees, that Plaintiffs have an adequate pre-deprivation and post-deprivation remedy to challenge an unconstitutional, or otherwise illegal, assessment or to recover the payment of unconstitutionally or illegally assessed taxes. The remedy is provided in Section 194.171, Florida Statutes, as well as refund provisions contained in Section 197.182, Florida Statutes.

In light of a clear and concise remedy being available to Plaintiffs under Florida law, this Court lacks subject matter jurisdiction to entertain Plaintiffs' claims pursuant to 42 U.S.C. §1893.

National Private Truck Council, Inc. v. Oklahoma Tax Comm'n, 515 U.S. 582, 115 S. Ct. 2351 (1995).

Conclusion

It is therefore ORDERED and ADJUDGED as follows:

1. Defendants' motions to dismiss the Second Amended Complaint on the basis that this Court lacks subject matter jurisdiction because of the failure of Plaintiffs to file within the 60-day claim period required pursuant to Section 194,171, Florida Statutes is DENIED.

2. Defendants' motion to dismiss Counts I of the Second Amended Complaint for failure to state a cause of action that SOHA violates Section 2, Article I of the Florida Constitution, the Privileges and Immunities Clauses of the Fourth and Fourteenth Amendments, specifically the right to travel component, and the Equal protection Clause of the Fourteenth Amendment of the United States Constitution is hereby GRANTED, and Count I is hereby dismissed with prejudice.

3. Defendants' motions to dismiss Count II of the Second Amended Complaint for failure to state a cause of action for permanent injunction pursuant to Section 26.012, Florida Statutes are hereby GRANTED, and Count II is dismissed with prejudice.

4. Defendants' motions to dismiss Count III of the Second Amended Complaint for lack of subject matter jurisdiction of this Court to entertain Plaintiffs' claim for relief pursuant to 42 U.S.C. §1983 are hereby GRANTED, and Count III is dismissed with prejudice.

5. For the reasons previously articulated by the court herein, the Plaintiffs' Motion for Partial Summary Judgment filed on March 17, 2008, is hereby DENIED.

6. Plaintiffs' motion for class action certification is moot in light of the dismissal with prejudice of all counts of the Second Amended Complaint.

7. Motions for clarification, reconsideration or rehearing shall not be entertained.

Final Judgment if Dismissal with Prejudice is entered against Plaintiffs Robert C. Bruner and Katherine C. Bruner, Deborah E. Plitnick and Stanley C. Chamberlain, and in favor of Defendants Bert Hartsfield, Doris Maloy, Frank Desguin, Vicki Potts, Gary Nikolits, Ann Gannon and Lisa Echeverri in their respective official capacities, as well as the Defendants Leon County, Leon County School Board, Charlotte County, Charlotte County School Board, City of North Palm Beach, Palm

Beach County, and Palm Beach County School Board. Defendants shall go hence without day.

DONE and ORDERED in Tallahassee, Leon County, Florida, this 27th day of October, 2008.

/s/ Charles A. Francis
Charles A. Francis
Circuit Judge

APPENDIX C

SUPREME COURT OF FLORIDA

MONDAY, MAY 24, 2010

CASE NO.: SC09-2292
Lower Tribunal No(s): 1D08-5524,
37-2007-CA-003247

ROBERT BRUNER, ET UX
PETITIONERS
vs.
BERT HARTSFIELD, ETC., ET AL,
RESPONDENTS.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, and POLSTON, JJ., concur.

APPENDIX D

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

ROBERT C. BRUNER and **KATHERINE S. BRUNER,** husband and wife, **DEBORAH E. PLITNICK,** and **STANLEY C. CHAMBERLIN,** individually and as representatives of similarly situated persons,

Plaintiffs,

v. **CASE NO. 2007-CA-003247**
CLASS REPRESENTATION

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida; **DORIS MALOY,** in her official capacity as Tax Collector of Leon County, Florida; **LEON COUNTY,** a political subdivision of the State of Florida; the **LEON COUNTY SCHOOL BOARD; FRANK DESGUIN,** in his official capacity as Property Appraiser of Charlotte County, Florida; **VICKI L. POTTS,** in her official capacity as Tax Collector of Charlotte County, Florida; **CHARLOTTE COUNTY,** a political Subdivision of the State of Florida;

CHARLOTTE COUNTY SCHOOL BOARD, GARY NIKOLITS, in his official capacity as Property Appraiser of Palm Beach County, Florida; **ANNE M. GANNON,** in her official capacity as Tax Collector for Palm Beach County, Florida; **CITY OF NORTH PALM BEACH,** a political subdivision of the State of Florida; **PALM BEACH COUNTY,** a political subdivision of the State of Florida; **PALM BEACH COUNTY SCHOOL BOARD** and **LISA ECHEVERRI,** in her official capacity as Executive Director of the **FLORIDA DEPARTMENT OF REVENUE**: and all named Defendants, individually and as representatives of similarly situated persons or entities,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiffs, **ROBERT C. BRUNER** and **KATHERINE S. BRUNER**, husband and wife, **DEBORAH E. PLITNICK** and **STANLEY B. CHAMBERLIN,** individually and as representatives of a class of similarly situated persons, sue the above named Defendants in their respective official capacities and as representatives of similarly situated persons or entities, and allege:

JURISDICTION, VENUE AND RELATED MATTERS

1. This Court has subject matter jurisdiction pursuant to Art. I, Sec. 21, and Art. V, Sections 5(b) and 20(3).

2. This action is brought for relief pursuant to Sections 86.011 and 26.012, *Fla. Stat.* (2007) and Art. VII, Section 13 of the Florida Constitution. To the extent Plaintiffs have no adequate remedy under Florida law, declaratory, remedial and injunctive relief is sought pursuant to 42 U.S. C. §1983 and 1988.

3. Venue is proper in Leon County because some of the named Defendants reside in, officially conduct business in or are headquartered in this County. The Florida Attorney General is served with a copy of this Complaint and all amendments thereto pursuant to Florida Statutes Section 86.091, *Fla. Stat.* (2006).

4. This class action arises out of the severe economic property tax disparities visited by taxing authorities and districts in the State of Florida upon all newly resident homesteaders within its borders in the form of Florida's Save Our Homes Amendment and its implementing statutory scheme (hereinafter referred to as "SOHA"). In addition to whatever legitimate ends it was designed to accomplish, SOHA has created a durationally

weighted ad valorem tax system, which is tilted unfairly so as to confer a grossly disproportionate economic disparity in benefits for long-term homestead property owners solely based on their term of residency. The net effect is the creation of a second class of citizens based solely on their length of residency. This unequal treatment creates a substantial economic disadvantage to persons like Plaintiffs who have recently migrated to Florida and become homestead residents. Exploitative and discriminatory tax schemes, particularly those designed with disparate and durationally weighted tax benefits which economically enhance long-term residents based solely on length of residency, is clearly prohibited by the Florida and The United States Constitutions. Specifically, in its initial configuration, SOHA is violative of Section 2, Article I of the Florida Constitution, the Privileges and Immunities Clauses of the Fourth and Fourteenth Amendments of the United States Constitution, specifically the well defined right to travel component contain therein, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

5. This is an action challenging the constitutionality of the SOHA scheme as it impacts the ad valorem tax assessments applied to Plaintiffs' properties, both in its original scheme and in its putative extended scheme authorized by Amendment I, which was adopted by referendum on January 29, 2007. Specifically, this is a class action

brought by Plaintiffs individually and on behalf of all others similarly situated pursuant to the provisions of Rule 1.220(b)(3), Fla.R.Civ.P. for retroactive and prospective relief in the form of declaratory and injunctive relief, and all other appropriate supplemental relief, to which Plaintiffs and Class Members are entitled, all within the jurisdiction of this Court.

PARTIES

6. Plaintiffs, **ROBERT C. BRUNER** and **KATHERINE S. BRUNER,** husband and wife, own a parcel of residential property in Leon County, Florida located at 2917 Golden Eagle Drive East, Tallahassee, Florida 32312. Plaintiffs **BRUNER** migrated to Florida from another state in 2005 and became permanent residents of Leon County sometime in 2006 and thereupon qualified for homestead status with respect to their aforesaid residential property in 2007. Besides the $25,000 exemption under Section 6, Article VII, of the Florida Constitution, Plaintiffs **BRUNER** virtually have no or minimal accrued or built up tax shelter benefits, which are abundantly conferred by SOHA upon long-term homesteaders. Moreover, under the changes to SOHA by Amendment I, Plaintiffs **BRUNER** and similarly situated homesteaders will be significantly disadvantaged by the competitive edge and benefits accruing to long-term homesteaders by virtue of a portability feature which empowers the utilization of their vastly accrued now portable tax shelters to reduce and mitigate the

impact of ad valorem taxes associated with replacement homesteads acquired by them.

7. Plaintiff **DEBORAH E. PLITNICK** individually owns a parcel of residential property in Port Charlotte, Florida located at 3487 Montgomery Drive, Charlotte County, Florida. Plaintiff **PLITNICK** migrated to Florida from another state and became a permanent resident of Port Charlotte, Charlotte County, Florida in June of 2004. Plaintiff **PLITNICK** thereupon qualified for homestead status with respect to her aforesaid residential property in 2005. Besides the $25,000 exemption under Section 6, Article VII, of the Florida Constitution, Plaintiff **PLITNICK** virtually has no or minimally accrued or built up tax shelter benefits, which are abundantly conferred by SOHA upon long-term homesteaders. Moreover, under the changes to SOHA by Amendment I, Plaintiff **PLITNICK** and similarly situated homesteaders will be significantly disadvantaged by the competitive edge and benefits accruing to long-term homesteaders by virtue of a portability feature which empowers the utilization of their vastly accrued tax shelters to reduce and mitigate the impact of ad valorem taxes associated with replacement homesteads acquired by them.

8. Plaintiff **STANLEY C. CHAMBERLIN**, as a tenant by the entireties, owns a parcel of residential property in North Palm Beach, Florida located at 1025 Country Club Drive, Palm Beach County, Florida 33408. Plaintiff **CHAMBERLIN**

migrated to Florida from New York State in December of 2006 became a resident of Florida and qualified for the above-described property for homestead status in 2007. Besides the $25,000 exemption under Section 6, Article VII, of the Florida Constitution, Plaintiff **CHAMBERLIN** virtually has no or minimally accrued or built up tax shelter benefits, which are abundantly conferred by SOHA upon long-term homesteaders. Moreover, under the proposed changes to SOHA authorized by Joint Resolution 2D, Plaintiff **CHAMBERLIN** and similarly situated homesteaders will be significantly disadvantaged by the competitive edge and benefits accruing to long-term homesteaders by virtue of a portability feature which empowers the utilization of their vastly accrued tax shelters to reduce and mitigate the impact of ad valorem taxes associated with replacement homesteads acquired by them.

9. The term "Plaintiff" as used in this complaint means and includes all persons and entities listed and named as plaintiffs in the caption of this complaint or any amendment thereto and in the text paragraphs thereof, and includes any plaintiffs hereafter added in any amendment, joinder or intervention. The term "Class Member" also means and includes both the named plaintiffs individually and as a representative of the class and any subclass herein described, as well as each member of such class and any subclass. The term "Plaintiffs and Class Members" refers to the "Plaintiffs" and "Class Members" as defined herein.

10. The term "Defendants" as used in this complaint means and includes all persons and entities listed and named as defendants in the caption of this complaint or any amendment thereto and in the text paragraphs thereof, and includes any defendants hereafter added by amendment or otherwise (unless otherwise specific in such amendment). The term "Defendant Class Member" also means and includes both the named defendants individually and as a representative of the class and any subclass herein described, as well as each member of such class and any subclass. The term "Defendant and Defendant Class Members" refers to the "Defendants" and "Defendant Class Members" as defined herein.

11. Defendant **BERT HARTSFIELD**, in his official capacity as property appraiser of Leon County, Florida is a proper party because he is instrumental in assessing, levying and implementing the *ad valorem* real property tax assessment process and procedure authorized by the Florida Constitution and the implementing statutory provisions, which are challenged in this proceeding.

12. Defendant **DORIS MALOY**, in her official capacity as tax collector of Leon County, Florida is a proper party because she is instrumental in collecting and disbursing *ad valorem* real property taxes exacted by the assessment and levying process, which is challenged in this proceeding.

13. Defendant **LEON COUNTY** is a political subdivision of the State of Florida with power and authority as a taxing authority or district to impose and collect *ad valorem* real property taxes through Defendants **HARTSFIELD** and **MALOY** upon the properties of Plaintiffs **BRUNER**. Said Defendant has benefited from taxes unconstitutionally exacted against and collected from Plaintiffs **BRUNER**.

14. Defendant **LEON COUNTY SCHOOL BOARD** is a duly established entity with power and authority as a taxing authority or district to impose and collect *ad valorem* real property taxes through Defendants **HARTSFIELD** and **MALOY** upon the properties of Plaintiffs **BRUNER**. Said Defendant has benefited from taxes unconstitutionally exacted against and collected from Plaintiffs **BRUNER**.

15. Defendant **FRANK DESGUIN**, in his official capacity as property appraiser of Charlotte County, Florida is a proper party because he is instrumental in assessing, levying and implementing the *ad valorem* real property tax assessment process and procedure authorized by the Florida Constitution and the implementing statutory provisions, which are challenged in this proceeding.

16. Defendant **VICKIE L. PITTS**, in her official capacity as tax collector of Charlotte County, Florida is a proper party because she is instrumental in collecting and disbursing *ad valorem* real property

taxes exacted by the assessment and levying process, which is challenged in this proceeding.

17. Defendant **CHARLOTTE COUNTY** is a political subdivision of the State of Florida with power and authority as a taxing authority or district to impose and collect *ad valorem* real property taxes through Defendants **DESGUIN** and **POTTS** upon the property of Plaintiff **PLITNICK**. Said Defendant has benefited from taxes unconstitutionally exacted against and collected from Plaintiff **PLITNICK**.

18. Defendant **CHARLOTTE COUNTY SCHOOL BOARD** is a duly established entity with power and authority as a taxing authority or district to impose and collect *ad valorem* real property taxes through Defendants **DESGUIN** and **POTTS** upon the properties of Plaintiffs **PLITNICK**. Said Defendant has benefited from taxes unconstitutionally exacted against and collected from Plaintiff **PLITNICK**.

19. Defendant **GARY NIKOLITS**, in his official capacity as property appraiser of Palm Beach County, Florida is a proper party because he is instrumental in assessing, levying and implementing the *ad valorem* real property tax assessment process and procedure authorized by the Florida Constitution and the implementing statutory provisions, which are challenged in this proceeding.

20. Defendant **ANNE M. GANNON**, in her official capacity as tax collector of Palm Beach

County, Florida is a proper party because she is instrumental in collecting and disbursing *ad valorem* real property taxes exacted by the assessment and levying process, which is challenged in this proceeding.

21. Defendant **PALM BEACH COUNTY** is a political subdivision of the State of Florida with power and authority as a taxing authority or district to impose and collect *ad valorem* real property taxes through Defendants **NIKOLITS** and **GANNON** upon the properties of Plaintiff **CHAMBERLIN**. Said Defendant has benefited from taxes unconstitutionally exacted against and collected from Plaintiff **CHAMBERLIN**.

22. Defendant **PALM BEACH COUNTY SCHOOL BOARD** is a duly established entity with power and authority as a taxing authority or district to impose and collect *ad valorem* real property taxes through Defendants **NIKOLITS** and **GANNON** upon the properties of Plaintiff **CHAMBERLIN**. Said Defendant has benefited from taxes unconstitutionally exacted against and collected from Plaintiff **BRUNER**.

23. Defendant **CITY OF NORTH PALM BEACH, FLORIDA** is a municipal corporation with power and authority as a taxing authority or district to impose and collect *ad valorem* real property taxes through Defendants **NIKOLITS** and **GANNON** upon the property of Plaintiff **CHAMBERLIN**. Said

Defendant has benefited from taxes unconstitutionally exacted against and collected from Plaintiff **CHAMBERLIN**.

24. Defendant **LISA ECHEVERRI** is the Executive Director of the **FLORIDA DEPARTMENT OF REVENUE** and is a proper party with respect to the structuring and implementation of any post-deprivation relief which may be availed to Plaintiffs and Class Members as a result of this proceeding. Said Defendant is also instrumental in implementing SOHA and the workings of Amendment 1 and its implementing legislation.

CLASS REPRESENTATION ALLEGATIONS

Class Definitions

25. The class represented by **Plaintiffs** is defined as follows:

> **Residents who have registered for Florida homestead exemption and who paid ad valorem taxes on their homestead properties for the first time after migrating to this State within the four (4) years preceding the filing of this Complaint.**

26. The class represented by **Defendants** is defined as follows:

> **All county officials in Florida responsible for levying and collecting ad valorem real property taxes and all taxing authorities and special districts in Florida which have assessed, levied, implemented, collected and benefited from ad valorem real property taxes paid by plaintiffs and class members within four years preceding the filing of this action.**

Numerosity

27. Both the Defendant Class and the Plaintiff class are so numerous that joinder of the members of the classes would be impractical. Although the exact number of members of the Plaintiff Class is personally unknown to Plaintiffs, it is believed that the Plaintiff Class will encompass many thousands of persons. All Plaintiff Class Members are readily identifiable from information and records in the possession and control of Defendants and Defendant Class Members. The Defendant Class consists of the *ad valorem* real

property taxing authorities or districts appraising, levying, implementing, collecting and benefiting from *ad valorem* real property taxes in the remaining unnamed counties of the State of Florida.

28. The number of members of the alleged Defendant Class is so numerous and geographically dispersed that joinder of individual Defendant Class Members as party defendants to this complaint is impractical. Joinder (even if practical) would also be contrary to the efficient use of scarce judicial resources, contrary to the public good and inconsistent with the orderly and efficient administration of civil justice between and among litigants.

Typicality

29. Plaintiffs' claims are typical of the claims of the members of the above-described class because Plaintiffs and all Plaintiff Class Members were injured directly or consequently by the unconstitutional and wrongful conduct and practices of Defendants and Defendant Class Members as alleged herein.

30. The levy, implementation, collection and beneficial use of a materially disparate, and durationally weighted tax designed and titled to benefit long-term homesteaders to the disadvantage of Plaintiffs and putative Class Members' properties in Florida is a uniform practice among the Defendants and Defendant Class Members and

named Defendants have acted in such a way that is generally typical of all members of the Defendant Class. Moreover, the utilization, extension and perpetuation of a tax exempt shelter status which is weighted beneficially to the duration of a resident's homestead entitlement is a uniform practice adhered to by Defendants and Defendant Class Members with consequential adverse disparate treatment befalling Plaintiffs and the Plaintiff Class Members. Such conduct makes appropriate the nature of the relief and remedies sought to be imposed on the Defendant Class as a whole.

Adequacy

31. Plaintiffs will fairly and adequately protect the interest of the class represented by them. The interests of Plaintiffs are coincident with, and not antagonistic to, those of the class. Plaintiffs' co-counsel, Marsha L. Lyons and Douglas Lyons, have been admitted to the Bar of the State of Florida for a period of time exceeding thirty (30) years, have been certified as adequate class counsel by numerous state and federal courts, and have extensive litigation experience in class action litigation. The other co-counsel for Plaintiffs are experienced litigators in complex individual and commercial settings, including class action matters generally.

32. The named Defendants are members of the Defendant Class they are alleged to represent.

The named defendant taxing authorities have levied, implemented, collected, and benefited from and presently intend to assess, levy, implement, collect and benefit from taxes with respect to the Plaintiff Class Members that are, in every material respect, similar to those taxes levied, implemented and collected from the Plaintiff Class, by the other taxing authorities or districts that comprise the absent Defendant Class.

33. The named Defendants are well suited to represent a Defendant Class comprised of all other similarly situated *ad valorem* real property taxing authorities or districts. In addition, such other authorities have the option to intervene to assist the named Defendants in the defense of this action and to otherwise protect their interest herein.

34. The named Defendants will be represented by both competent government and retained outside legal counsel. Neither the named Defendants nor their counsel are known or expected to have any conflict or antagonism with other Defendant Class Members that would prevent them or their counsel from providing fair and adequate representation. In asserting their defenses to Plaintiffs' claims herein, the named Defendants would simultaneously be asserting the same defenses that would be available to absent Defendant Class Members. The named Defendants have a true stake in the instant cause and likewise have the capacity and willingness to defend this

action fairly, adequately and effectively on behalf of both themselves and the Defendant Class.

Commonality and Predominance

35. Questions of law and fact common to the members of the Defendant Class predominate over questions which may affect only individual members, if any, in that Defendants and Defendant Class Members have acted on grounds generally applicable to the Plaintiff Class. The basic, overriding and predominant combined common question of fact and law is whether the Defendant Class Members, by applying the aforesaid SOHA provisions, have levied, implemented, collected and benefited from a disparate and durationally weighted tax shelter scheme which results in Plaintiffs and the Plaintiff Class Members paying unconstitutionally imposed ad valorem taxes over and above the amount that could be constitutionally levied upon their properties during the four year period preceding the filing of this action. Included with this common basis question are the following common issues:

a. Whether members of the Defendant Class levy, implement, collect and benefit from *ad valorem* real property taxes or possess the ability to lawfully assess, levy, implement, collect and benefit from *ad*

valorem real property taxes, the effect of which is to confer disparate and durationally weighted or skewed tax shelter benefits to the economic benefit of long-term Florida homesteaders while denying similar or comparative shelter benefits to Plaintiffs and the Plaintiff Class Members.

b. Whether such disparate and durationally weighted benefits conferred upon long-term homesteaders, deprives Plaintiffs and the Plaintiff Class Members the equal protection guaranteed by the Florida and United States Constitutions, particularly the right to travel inherent in the Privileges and Immunities Clause of the United States Constitution and made enforceable by the Equal Protection Clause.

c. Whether such disparate and durationally weighted disadvantaged tax shelter treatment of Plaintiffs and the Plaintiff Class Members by the members of the Defendant Class

are materially similar.

d. Whether disparate and durationally weighted *ad valorem* real property taxes against Plaintiffs' and the Plaintiff Class Members' properties were levied, implemented, collected by and benefited each respective taxing authority or district of the Defendant Class pursuant to authority granted by the aforesaid SOHA provisions.

e. Whether all of the Plaintiff Class Members are entitled to a remedy for paying such unconstitutional taxes imposed upon their properties and, if so;

f. The nature of the remedy, both prospective and retroactive, that is available to such Plaintiff Class Members.

g. Whether the portability extension of SOHA, which was created by Amendment I will exacerbate the disparate treatment accorded to Plaintiffs and the Plaintiff Class Members

by SOHA.

36. The only possible individual questions relate to the amount of any actual unlawful tax exactions incurred by the Plaintiff Class Members.

37. Thus, the questions of fact and law are common to all Defendant Class Members and predominate as to all members of the Defendant Class over any questions affecting only individual Defendant Class Members. The nature of the claims asserted and the legal theories supporting Plaintiff Class Members, and the nature of the remedies sought by the members of the Plaintiff Class, are all of common origins and similarly affect each member of the Defendant Class, and are all subject to the assertion by such Defendant Class Members of the same defenses thereto, or otherwise predominate over any question of law or fact effecting only individual members the Defendant Class.

Superiority

38. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein, because such treatment will permit a large number of similarly situated persons to prosecute common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense of numerous individual actions. Class action treatment will also facilitate notice to

and recovery by persons who may be unaware of their legal rights and claims and whose identity is known to Defendant and Defendant Class Members. Further, class action treatment would permit the adjudication of claims by the Plaintiff Class Members who have relatively small actual damages and who could not afford to individually litigate a claim against Defendants and Defendant Class Members.

Manageability

39. Plaintiffs are aware of no other pending litigation concerning these issues that has already been commenced by any person who is a member of the proposed Plaintiff Class. Further, Plaintiffs know of no difficulty likely to be encountered in the management of this action that would preclude its maintenance as a class action.

40. There would be no management difficulties that would preclude the litigation of this action as a class action for both the Plaintiff and Defendant Classes.

41. The claims of the Plaintiff Class and the defenses of the Defendant Class are consistent and uniform.

42. There are no material facts at issue because this action solely involves a constitutional challenge to the *ad valorem* real property taxes levied, implemented and collected upon residential

properties owned by newly migrant residents of this State.

43. Each of the classes alleged may be readily identified, located and defined because each class is one for which public records exist and is composed of a finite group of property owners, taxing authorities or districts and certain designated county and state officials. Thus, notice to all Class Members may easily and efficiently be accomplished at the time and in the manner established by the Court.

44. Proof of payment of the unconstitutional taxes may be accomplished through the use of uncomplicated objective data and facts available from the records of the Plaintiff Class Members, the records of the Defendant Class Members, or both.

45. Subsequent referral to a Special Master for calculation of individual Plaintiff Class Members' damages is an often used mechanism that is well suited and applicable to this type of action.

46. A unitary action pursuant to class treatment of both the proposed Plaintiff and Defendant Classes will serve the beneficial public purposes associated with class actions. Class treatment will permit a large number of Florida *ad valorem* taxing authorities having virtually identical tax provisions to adjudicate the constitutionality ***vel***

non of such taxes in a single forum, efficiently and without unnecessary repetitious litigation, duplication, expenditure of public funds and consumption of scarce judicial resources. The adjudication of predominant and common issues pursuant to the class action rule would benefit the public and would present an orderly and manageable action for the Court and parties, including absent members of both classes.

47. Class treatment is superior also because a single unified action before this Court will obviate the possibility of repetitious litigation with respect to each of the taxpaying non homestead property owners in the same manner as challenged in this action.

48. As for the Plaintiff Class, class treatment will permit a large number of similarly, indeed, virtually identically situated persons, to adjudicate their common and typical claims in a single forum simultaneously, efficiently and without duplication and unnecessary expenditure of scarce judicial labor and resources, counsel labor and resources and related expenses.

49. Class treatment will also permit the adjudication of relatively small monetary claims by members of the Plaintiff Class who otherwise would find it uneconomical to bear the significant expense that would be required by individual Plaintiff Class Members to prosecute individual actions.

50. Failure to certify the classes alleged and to permit this complaint and these causes of action to be prosecuted as a class action will present a public policy and judicially unacceptable risk that the prosecution of numerous separate claims by individual Plaintiff Class Members who paid the unconstitutional taxes would result in inconsistent or varying adjudications. This would be contrary to the dignity and honor due the judiciary, in that varying and mutually exclusive standards of conduct would be established regarding the named Defendants and taxing authorities comprising the Defendant Class.

51. Failure to certify the classes alleged and to permit this complaint and these causes of action to be prosecuted as a class action would adversely affect the public interest, in that an adjudication of any individual Plaintiff Class Member's claim would effectively be dispositive of the legal interests and claims of other Plaintiff Class Members who were not parties to the non-class adjudication, or would substantially impair or impede the ability of other Plaintiff Class Members who were not parties to such adjudication to protect their legal interests.

52. This action is well suited for class management by the Court because there are no inherent conflicts between related Class Members that touch upon the common issues alleged.

53. Adverse parties to this action are well represented by competent Florida Bar members. They are qualified and oriented to prosecute or defend this action efficiently and consistently with the governing case law material to class actions. Counsel thus will be able to assist the Court in its important oversight role to assure adequacy of representation of the absent members of both classes alleged.

FACTUAL BACKGROUND COMMON TO ALL COUNTS

54. Plaintiffs and prospective Plaintiff Class Members are recently migrated homestead residents in Florida, who within four years preceding the filing of this action, paid ad valorem taxes on their homesteads.

55. During the relevant period of time, Plaintiffs and the Plaintiff Class Members have paid and, unless granted prospective relief herein, will continue to pay *ad valorem* property taxes on their homestead properties which are grossly disproportionate because their assessment valuations do not benefit from the magnitude and extent of tax shelter benefits due solely to durationally accrued long-term Florida homestead benefits from the operation of SOHA.

56. As a result of the disparate and durationally weighted tax shelter benefits accruing

by operation of SOHA to long-term homesteaders, Plaintiffs and the Plaintiff Class Members have paid, and without prospective relief granted herein, will continue to pay *ad valorem* real property taxes on their homestead properties which are well in excess of the taxes assessed upon and paid by long-term homesteaders owning similarly or comparably valued homesteads. In particular:

a. For the four years preceding their purchase of their residential property, the taxes on the Bruner parcel were as follows: $5,819.31 in 2003, $5,918.39 in 2004, $5,939.97 in 2005, and $5,830.40 in 2006. In the first year that the Bruner's took homestead on the property the assessed amount of taxes paid were $8,102.67, a difference of $2,273.27 for an increase of 39% over the prior year. SOHA had built in a 39% tax savings for the prior homesteaders in perpetuity based solely on the length of homestead residence. During the four years prior to the Bruner's purchasing their Florida residence the taxes only went up from $5,819.31 to $5,830.40, an increase of $11.09 over a 4 year period or .2% per year. In contrast the year the Bruners purchased the same residence the taxes went up 39%. The tax profile for their parcel is contained in **Exhibit "A."**

b. Stanley Chamberlin's taxes in 2000, when he was a non-resident owner of the property were $8,211.65. By 2006, the assessed property taxes had gone up to $23,356.42 before he

became a Florida resident and declared homestead in 2007. His taxes in 2007 were $22,829.66. Taxes on the parcel went up almost 300% from 2000 to 2006. During the same period of time, if he had been a homestead resident under SOHA's cap and the shelter generated thereby, Chamberlin's taxes would only have increased 19.40% (3% compounded yearly). The tax profile for this parcel is reflected in composite **Exhibit "B."**

c. Deborah Pliltnick acquired her homestead parcel in 2004. For the four year period prior to her acquisition, the parcel had been assessed taxes under SOHA's shelter in the amount of $1,879 for 2003, $1,747 for 2002, $1,779 for 2001, $1,833 for 2000. In 2005, her first declared homestead assessment, Plitnick paid taxes in the amount of $4,421.53, a difference of $2,503.60, or 131% over the prior year. So for the four years prior to acquisition by Plitnick, the taxes on the parcel, by operation of the SOHA shelter and a mitigated millage rates, went from $1,833.52 to $1,879.99, an increase of $49.97 over a four year period for an increase of 0.6% per year on an annualized basis. The tax profile for this parcel is reflected in composite **Exhibit "C."**

57. Section 4, Article VII of the Florida Constitution (1968) and the implementing statutory regulations contained in §193.155, Fla.Stat. (2007) (hereinafter SOHA provisions), to the extent such provisions grant and allow the accumulation of yearly tax shelters exemptions to resident

homesteaders by the extent to which their residence valuations exceed three percent (3%) of the assessment for the prior tax year, or the increase in the consumer prices index ("CPI") for the preceding year, whichever is less, effectively create durationally weighted and increasingly disparate economic tax shelter benefits which are dramatically and permanently tilted and skewed in favor of long-term resident homesteaders solely as a function of time of residence. In particular, the SOHA provisions are unconstitutional because they offend the equal protection component of the Florida Constitution and privilege and immunity and equal protection features contained in the United States Constitution by favoring long-term homesteaders with greater tax shelter benefits than allowed or granted to newly or recently migrated homestead residents such as Plaintiffs and the Plaintiff Class Members making these new residents de facto second class citizens solely based on length of homestead residence. In addition to the disparities referenced in paragraph 56, the magnitude of such skewed or disparate tax shelter benefits created by SOHA is reflected in the Charts A and B attached hereto as **Exhibits "D" and "E"** respectively.

For example:

a. **Chart A (Ex. "D")** reflects data pertinent to a new homesteader in Florida, who, hypothetically in 2005 purchased his residence which was originally valued at $200,000 when it was

assessed in tax year 1995, the year SOHA took effect. If the structure was initially valued at $200,000 in 1995, this new homesteader pays taxes on an assessment value for 2006 (after allowance of the $25,000 homestead deduction) of $466,373. On the other hand, a long-term homesteader owning a similar or comparable residence since 1995 pays ad valorem taxes only on a 2006 valuation of $248,172. Using a hypothetical aggregate millage rate of 20 mills or 2%, the new homesteader pays $9,327 in ad valorem taxes in tax year 2006, while the long-term homesteader pays a tax of only $4,963.

b. **Chart B (Ex. "B")** reflects the exponential spread or growth of SOHA's tax shelter as U.S. citizens continue to migrate to Florida to take up homestead residences. A newly homestead resident to Florida in 2026, who acquires the residential parcel or structure valued at $200,000 in 1995, will be assessed ad valorem taxes on a valuation basis[1] of $1,871,948, while a long-term resident who has continuously homesteaded a similar or comparable residence since 1995, will only be assessed on a valuation basis of $443,378, or merely 23.6% of the new homesteaders' assessed value.

c. As a result of this disparate and durationally weighted tax sheltered status, newly

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[1] Assumes allowance of the full $50,000 homestead deduction authorized by Amendment I.

migrated Florida homesteaders have paid, and over time will pay, a greater and expanding disparate share of *ad valorem* taxes on their homesteads than they otherwise would have been assessed if the SOHA tax shelter benefits did not exist. This differential is referred to herein as the tax "overpayment' attributable to SOHA's durationally weighted ad valorem tax shelter.

58. The foregoing durational disparity and its consequent tax "overpayment" feature is built into Florida's ad valorem tax scheme by the impact and footprint of SOHA. Recently, the Florida legislature, by Joint Resolutions 2D and 4D, created for initiative referendum consideration certain modifications to Florida's Constitution, including the aforesaid SOHA shelter mechanism contained in Art. VII, Section 4. A portion of these modifications are designed to extend the discriminatory disparities created by SOHA directly into marketplace transactions with even more significant adverse competitive disadvantages to Plaintiffs and the Plaintiff Class Members. These measures were approved in the form of Amendment I by a super majority vote of Florida citizens in an election held on January 29, 2008. Joint Resolution 4D was enacted to implement the changes contained in Amendment I.

COUNT I

Declaratory Judgment and Request for Supplemental Retroactive Relief Pursuant to Chapter 86, Laws of Florida

59. Plaintiffs and the Plaintiff Class Members are in doubt about the validity and lawfulness of ad valorem property taxes paid by them for tax years 2007, 2006, 2005 and 2004 and all future taxes based on the SOHA provisions. Specifically, Plaintiffs and the Plaintiff Class Members contend that all tax assessments upon their homestead properties for the aforesaid tax years were, and in the future, will be constitutionally invalid and unlawful to the extent such assessments are the products of an ad valorem tax system which encompasses disparate and durationally weighted tax shelter exemptions. Here, the challenged SOHA exemptions accrue disproportionately in favor of long-term homesteaders based solely on the length of time they owned their homestead properties. The net result is overpayment of taxes by Plaintiffs and the Plaintiff Class Members.

60. But for the disparate and durationally weighted tax shelter benefits conferred disproportionately by SOHA in favor of long-term homesteaders, Plaintiffs' and the Plaintiff Class Members' ad valorem tax exactions for any of the tax years described above would have been significantly less.

61. Most significantly, the portability feature of Amendment I extends SOHA's disparate and durationally weighted tax shelter benefits to the disadvantage of Plaintiffs and the Plaintiff Class Members by hampering and impeding their economic ability to compete with long-term homeowners in purchasing comparatively priced substitute or replacement residences.

62. All conditions precedent have occurred, been performed or have been waived.

63. Plaintiffs and the Plaintiff Class Members are in doubt as to their rights and entitlements under the circumstances in view of the fact that SOHA, and its putative marketplace extension by Amendment I, offends the following provisions of the Florida and United States Constitutions:

A.

Violation of Equal Protection Under the Florida Constitution

64. Section 2, Article I of the Florida Constitution encompasses equality of rights, including equal protection of such rights. Given that perhaps some durational or temporal latitude is necessary to insure that a claim to residency or homestead status is indeed *bona fide*, SOHA's umbilical tie to the length or duration of homestead ownership as a metric for measuring and allotting the magnitude and extent of tax shelter benefits has

denied Plaintiffs and the Plaintiff Class Members equal protection secured by the Florida Constitution.

65. The tax shelter provisions of SOHA are durationally weighted based on factors of inflation measured over time so that Plaintiffs and the Plaintiff Class Members are accorded smaller cumulative shelter benefits as compared to long-term homesteaders who have been residents of Florida since SOHA became operational in 1995. This tax benefit allotment mechanism relegates Plaintiffs and the Plaintiff Class Members to an inferior category of residency status in the payment of ad valorem taxes, which status cannot be tolerated based on any concept of rationally based analysis consistent with the Equal Protection Clause of the Florida Constitution.

66. Amendment I extends the tax shelter benefits generated by SOHA by enabling such benefits to be transaction ally transferred by a homesteader to a substitute residence. This "portability" feature insures in perpetuity an inferior residency status for Plaintiffs and the Plaintiff Class Members. As a result, they will have a permanent economic disadvantage in the marketplace competing for the purchase of homes with long-term residents homesteaders. Such marketplace disparate benefits which are conferred disproportionately in favor of long standing homesteaders cannot be tolerated under any form or

concept of rationally based analysis consistent with the Florida Constitution.

67. Even if Defendants could muster a reason or reasons to support the durationally weighted tax shelter benefits of SOHA, extended by Amendment I, the operation of such tax shelter benefits to create disparate categories of residency status offends Plaintiffs and the Plaintiff Class Members' "fundamental right" to residency equality in Florida. The compelling nature of such reason or reasons must be evaluated by the application of strict scrutiny. No such reason or reasons, which may be proffered by Defendants, can meet and satisfy such scrutiny.

B.
Violation of Right to Travel Protection

68. Article IV, § 2, of the United States Constitution provides that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States," and is commonly referred to as the "Privileges and Immunities Clause" of the Constitution. It is incorporated against the states individually by the Fourteenth Amendment, which provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...."

69. The right to travel is a fundamental component of the privileges and immunities protection afforded to United States Citizens. One of the recognized components of this constitutionally protected right to travel, a component which is expressly embodied by the Fourteenth Amendment, includes a fundamental right of citizens of one state to migrate to and become fully and equally endowed citizens and residents of another state. All Plaintiffs and the Plaintiff Class Members have migrated to Florida from other states to become newly recognized residents and homesteaders in Florida.

70. SOHA constitutes an infringement on the right to travel because recently migrated residents and homesteaders in Florida, such as Plaintiffs and the Plaintiff Class Members, receive disparate and durationally weighted ad valorem tax shelter benefits which are inferior quantitatively *vis a vis* long-term homesteaders. There is no legitimate or compelling argument which can survive the strict or heightened scrutiny necessary to justify a tax system based solely on length of residence.

C.
Violation of Equal Protection Under the Fourteenth Amendment

71. Plaintiffs and the Plaintiff Class Members right to travel as described in Point B. above represents "fundamental rights" which cannot be accorded disparate and inferior treatment under

state law, absent the demonstration of a compelling reason or reasons that pass "strict scrutiny" review under the Equal Protection Clause of the Fourteenth Amendment.

72. The Defendant taxing authorities cannot satisfy the strict scrutiny requirements of the Equal Protection Clause as related to Plaintiffs' and the Plaintiff Class Members' rights to travel.

D.
Supplemental Relief – Refunds/Unjust Enrichment

73. The designated Defendant taxing authorities or districts, individually and as representatives of similarly situated taxing authorities or districts throughout Florida, as a result of the aforesaid SOHA provisions, have utilized and unfairly benefited from the unconstitutional *ad valorem* property tax "overpayments" paid by Plaintiffs and all the Plaintiff Class Members as above described. Moreover, said taxing authorities and districts will continue to benefit unfairly in the future by the continuation of SOHA's disparate and durationally weighted tax shelter benefits so violently tilted in favor of long-term homesteaders. The retention of such monetary benefits by Defendant taxing authorities or districts is inequitable and unjust.

74. As a condition to bringing this action, Plaintiff and the Plaintiff Class Members were and are mandatorily obliged to pay their subject tax "overpayments" by Section 13, Article VII, Florida Constitution. Thus, the requirements of due process demands that they be accorded a refund of the taxes exacted from them to the extent they are unconstitutional and unlawful and constitute "overpayments". Alternatively, due process demands that Plaintiffs and the Plaintiff Class Members receive a pro rata distributative credit against future taxes as recompense for such past tax "overpayments" which have been collected by Defendant taxing authorities for the preceding four years in question.

75. Moreover, under all attendant facts and circumstances, the continued retention of the benefits conferred on the Defendant class by the Plaintiff class is clearly unjust. The Defendant class members should be disgorged of the excessive taxes collected. The equitable concept of unjust enrichment, under the circumstances here alleged, demands that the tax "overpayments" be returned to Plaintiffs and the Plaintiff Class Members by the Defendant taxing authorities and districts or that some other equitable relief be fashioned in favor of Plaintiffs and the Plaintiff Class Members.

WHEREFORE, Plaintiffs and the Plaintiff Class Members request that the Court enter its judgment declaring, directing and ordering that:

A. The above-identified SOHA provisions are unconstitutional and unlawful under the Florida and United States Constitutions to the extent they conferred disparate and durationally weighted ad valorem tax shelter benefits to long-term homesteaders while conferring substantially reduced tax shelter benefits to Plaintiffs and the Plaintiff Class Members upon similar or comparatively valued homesteads;

B. The "portability" feature of Amendment 1, to the extent it grants transactional status and utility to the unconstitutional tax shelter benefits conferred by SOHA is likewise unconstitutional and unlawful;

C. All portions or segments of ad valorem homestead tax assessments levied upon and paid by Plaintiffs and the Plaintiff Class Members, within four (4) years preceding the filing of this Complaint, to the extent they were the product of or directly attributable to the disparate and durationally weighted tax sheltered benefits accruing in favor of long-term homesteaders under SOHA, were invalid, unlawful and void *ab initio*;

D. Order and grant supplemental relief, pursuant to Section 86.061, *Fla. Stat.* (2006) and its predecessor, by directing Defendant taxing authorities and districts, and all other similarly situated Class Defendants, to disgorge to Plaintiffs and the Plaintiff Class Members all such unlawful

and invalid ad valorem property taxes paid by them during the four (4) tax years preceding the filing of this Complaint;

E. Alternatively to the relief requested in D. above, order and grant to Plaintiffs and the Plaintiff Class Members, as supplemental relief, an award of damages for unjust enrichment pro rata against Defendants and The Defendant Class Members to the extent said Defendants and The Defendant Class Members have received and benefited from the unconstitutional and unlawful ad valorem taxes paid by Plaintiff and the Plaintiff Class Members; and, order that such damages be paid by means of credits against future ad valorem taxes assessed against homestead properties owned by Plaintiffs and the Plaintiff Class Members.

F. Order that Plaintiffs and the Plaintiff Class Members be awarded pre-judgment and post judgment interest on such disgorged sums, or damage awards, together with taxable costs assessed against Defendants and Defendant Class Members pro rata for prosecuting this action;

G. Order and grant the award of reasonable attorney's fees to Plaintiffs' and the Plaintiff Class Members' counsel to be paid from all tax sums disgorged or awarded as damages;

H. Grant such other and further relief as may be proper;

I. Furthermore, Plaintiffs pray for judgment in their favor and in favor of the Plaintiffs and the Plaintiff Class Members against the Defendants and Defendant Class Members, where applicable for each claim of relief, as well as general and special relief in the form of an Order as follows:

a. Certifying that this action be maintained as a class action on behalf of the named Plaintiffs and all others similarly situated;

b. Certifying that this action be maintained as a class action on behalf of the named Defendants and all others similarly situated;

c. Appointing the named Plaintiffs and Defendants as class representatives;

d. Appointing counsel for the named Plaintiffs as class counsel for the Plaintiff Class;

e. Appointing counsel for the named Defendants as class counsel for the Defendant Class;

f. Approving the form of notice to be sent to the respective classes; and

g. Requiring each Defendant Class Member to "piggy-back" the notice of Plaintiffs'

class certification to one of its mailings to the Plaintiffs Class Members.

COUNT II
PROSPECTIVE RELIEF

76. This is a cause of action for prospective relief in the form of a permanent injunction, pursuant to Section 26.012, *Fla. Stat.* (2006), to restrain ongoing and future violations of the Florida and United States Constitutions.

77. Plaintiffs reallege the general allegations of Paragraphs 1 through 74 above as if specifically set forth herein.

78. Plaintiffs and the Plaintiff Class Members have no adequate remedy at law with respect to the existing future impact of the application of the aforesaid SOHA provisions and the putative extensions thereof authorized by Amendment I.

79. For all of the reasons set forth above, the disparate and durationally weighted ad valorem tax shelter benefits conferred by the SOHA provisions, and the portability extension thereof affected by Amendment 1, are unconstitutional and unlawful regarding the present and future impact upon Plaintiffs and the Plaintiff Class Members as homesteaders in Florida.

WHEREFORE, Plaintiffs and the Plaintiff Class Members request that this Court grant the class action relief requested in Item I of the "Wherefore Clause" of Count I and further determine, order and direct that:

A. Adjudicate that all above described SOHA provisions and the extension thereof authorized by Amendment I are unlawful and unconstitutional to the extent they confer disparate and durationally weighted ad valorem tax shelter benefits in favor of long-term homesteaders *vis a vis* Plaintiffs and the Plaintiff Class Members;

B. Permanently enjoin Defendants and the Defendant Class Members from implementing or permitting to be implemented tax assessments against Plaintiffs' and the Plaintiff Class Members' homestead properties which are derived from or reflect the product of the unlawful SOHA provisions as they relate to Plaintiffs' and the Plaintiff Class Members' homestead properties for tax year 2008 or thereafter.

C. Permanently enjoin Defendants and the Plaintiff Class Members from implementing or otherwise making operable the portability utility authorized by Amendment 1 as it pertains to and extends the unlawful SOHA provisions to Plaintiffs' and the Plaintiff Class Members' homestead properties so as to disadvantage them in the marketplace for residential structures.

D. Award taxable costs of prosecuting this action to be paid pro-rata by Defendants and the Defendant Class Members;

E. Award reasonable attorney's fees for Plaintiffs' and the Plaintiff Class Members' attorneys to be paid from tax savings generated as a result of the injunctive relief conferred hereby in favor of Plaintiffs and the Plaintiff Class Members counsel. Direct Defendant **LISA ECHEVERRI**, in her official capacity as the Executive Director of the **FLORIDA DEPARTMENT OF REVENUE**, to oversee and coordinate the computation of such tax savings attributable to action taken by each named Class Defendant taxing authority or district consistent with such prospective relief; and, to supervise the implementation and collection of awarded attorney's fees from reduced future tax assessments against the properties of Plaintiffs and the Plaintiff Class Members resulting from such injunctive relief.

F. Grant such other and further relief as may be proper.

COUNT III
Relief Under 42 U.S.C. §1983

80. This is an alternative cause of action for declaratory, supplemental and injunctive relief pursuant to 42 U.S.C. §1983.

81. Plaintiffs realleges the general allegations of paragraphs 1 through 62 and paragraphs 67 through 74 as if specifically set forth herein.

82. This cause of action is only applicable if it is determined that Plaintiffs and the Plaintiff Class Members do not have an adequate remedy under Florida law to address the violations of their federal constitutional rights as above alleged.

83. At all material times, Defendants and the Defendant Class Members, acting under color of state law and in their official capacities, deprived and in the future will continue to deprive, Plaintiff and the Plaintiff Class Members of rights and privileges protected by the United States Constitution. Such deprivations are ongoing and continuing in nature.

84. As a direct and proximate result of such constitutional deprivations, Plaintiffs and the Plaintiff Class Members have suffered and will continue to suffer, the "over payments" of ad valorem taxes on their homestead.

85. The designated Defendant taxing authorities and districts, individually and as representatives of similarly situated taxing authorities or districts throughout Florida, as a result of the aforesaid SOHA provisions, have utilized and benefited from the unconstitutional *ad*

valorem property tax over payments paid by Plaintiffs and all the Plaintiff Class Members as above described. Moreover, said taxing authorities will continue to do so in the future by the perseverance of SOHA's disparate and durationally weighted tax shelter benefits tilted in favor of long-term homesteaders. The retention of such benefits by Defendant taxing authorities is unjust.

86. Plaintiff and the Plaintiff Class Members were obliged to pay their subject tax "over payments" as a condition to bringing this action. Section 13, Article VII, Florida Constitution. Thus, the requirements of due process demands that they be accorded a refund of the taxes exacted from them to the extent they are unconstitutional and unlawful and constituted "overpayments" as above described. Alternatively, due process demands that Plaintiffs and the Plaintiff Class Members receive a pro rata distributative credit for such tax "overpayments" from future taxes.

87. Plaintiffs and the Plaintiff Class Members have engaged the undersigned counsel to represent them in this proceeding and are entitled to the award of reasonable attorney's fees pursuant to 42 U.S.C. §1988.

WHEREFORE, Plaintiffs and the Plaintiff Class Members request that this Court grant the class action relief requested in Item I of the

"Wherefore Clause" of Count I and further determine order and direct that:

A. Adjudicate that all above described SOHA provisions and the extension thereof authorized by Amendment I are unlawful and unconstitutional to the extent they confer disparate and durationally weighted ad valorem tax shelter benefits in favor of long-term homesteaders *vis a vis* Plaintiffs and the Plaintiff Class Members;

B. Permanently enjoin Defendants and the Defendant Class Members from implementing, or permitting to be implemented, tax assessments against Plaintiffs' and the Plaintiff Class Members' homestead properties which are derived from or reflect the product of the unlawful SOHA provisions as they relate to Plaintiffs' and the Plaintiff Class Members' homestead properties for tax year 2008 or thereafter.

C. Permanently enjoin Defendants and the Defendant Class Members from implementing or otherwise making operable the portability of SOHA authorized by Amendment I as it pertains to or extends the unlawful SOHA provisions to Plaintiffs' and the Plaintiff Class Members' homestead properties so as to disadvantage them in the marketplace for residential structures.

D. Award taxable costs of prosecuting this action to be paid pro-rata by Defendants and the Defendant Class Members;

E. Award reasonable attorney's fees for Plaintiffs' and the Plaintiff Class Members' attorneys to be paid from a common fund consisting of the tax savings generated as a result of the injunctive relief conferred hereby in favor of Plaintiffs and the Plaintiff Class Members and any refund or credits for tax "overpayments" exacted by Defendants and the Defendant Class Members. Direct Defendant **LISA ECHEVERRI**, in her official capacity as the Executive Director of the **FLORIDA DEPARTMENT OF REVENUE,** to oversee and coordinate the computation of such tax savings attributable to action taken by each named Class Defendant taxing authority or district consistent with such prospective relief and to supervise the implementation and collection of awarded attorney's fees, from reduced future tax assessments against the properties of Plaintiffs and the Plaintiff Class Members resulting from such injunctive relief and ay applicable refund credits.

F. Grant such other and further relief as may be proper.

ATTORNEYS FOR PLAINTIFFS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and facsimile to the attached service list this 7th day of February 2008.

/s/ William C. Owen
William C. Owen

APPENDIX E

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL
CIRCUIT IN AND FOR LEON COUNTY

ROBERT C. BRUNER and
KATHERINE S. BRUNER, husband
and wife, and **DEBORAH E.**
PLITNICK, individually
and as representatives of similarly
situated persons,

Plaintiffs,

v. CASE
NO. 2007-CA-003247

CLASS

REPRESENTATION
BERT HARTSFIELD, in his official
capacity as Property Appraiser of Leon
County, Florida; et al

Defendants.
_____/

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs, **ROBERT C. BRUNER** and **KATHERINE S. BRUNER,** husband and wife, **STAN CHAMBERLIN** and **DEBORAH E. PLITNICK,** individually and as representatives of similarly situated persons, by and through their undersigned counsel and pursuant to Rule 1.510(a), Fla.R.Civ.P., move for partial summary judgment as to liability and in support hereof state:

1. This motion is timely filed pursuant to Rule 1.510(a).

2. From the affidavit of James T. McClave, Ph.D. filed simultaneously herewith and the Appendix referenced in said affidavit, the tax assessment shelter conferred upon homesteaders by Sec. 4, Art. 4 of the Florida Constitution and implementing legislation (hereinafter referenced to as SOHA) confers durationally weighted and dillutionally disparate benefits upon newly migrant homestead residents of Florida in violation of the right to travel component of the United States Constitution and its counterpart adoption as a feature of the equal protection clause of the Florida Constitution.

3. The scope and significance of such durationally weighted benefits, which are not equally extended to Plaintiffs and Class Members, is exacerbated by the shelter portability feature extended to longtime homesteaders by the adoption of Amendment 1 on January 29, 2008.

4. Any conflict between the content of the Florida and United States Constitutions must be resolved by application of the Supremacy Clause of the latter contained in Article VI.

5. There are no genuine issues as to any material fact and Plaintiffs and Class Members are entitled as a matter of law to summary judgment declaring SOHA, inclusive of its implementing provisions contained in Section 193.155, *Fla. Stat.* together with its portability extension conferred by Amendment 1, to be unconstitutional, invalid and void *ab initio.*

WHEREFORE, Plaintiffs request that the Court declare SOHA and the portability feature pertaining thereto which is contained in Amendment 1 to be unconstitutional under both the Unites States and Florida Constitutions. Plaintiffs further request that the operation of SOHA in its entirety be permanently enjoined. Plaintiffs additionally request that this matter be set for a factual hearing to consider the granting of supplemental relief pursuant to Section 86.0961, *Fla. Stat.* (2007).

Dated this 14th day of March 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the attached service list this 14th day of March 2008.

/s/ William C. Owen
William C. Owen

APPENDIX F

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

ROBERT C. BRUNER and **KATHERINE S. BRUNER**, husband and wife, **DEBORAH E. PLITNICK**, and **STANLEY C. CHAMBERLIN**, individually and as representatives of similarly situated persons,

Plaintiffs,

v.

CASE NO. 2007-CA-003247
CLASS REPRESENTATION

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida; **DORIS MALOY**, in her official capacity as Tax Collector of Leon County, Florida; **LEON COUNTY**, a

political subdivision of the
State of Florida; the **LEON**
COUNTY SCHOOL BOARD; et al,

Defendants.

_____/

AFFIDAVIT OF JAMES T. McCLAVE

COUNTY OF ALACHUA
STATE OF FLORIDA

Before me, JAMES T. McCLAVE, who being duly sworn, deposes and says:

1. My name is James T. McClave. I am currently president and CEO of Info Tech, Inc., a firm specializing in statistical and econometric consulting and in technical software development.

2. My educational background includes a bachelor's degree in physics and a Ph.D. in statistics. After earning my Ph.D. in 1971, I taught at the university level for 20 years, in both departments of statistics and business schools. The primary focus of my teaching and research during this period was in the area of econometrics, which is the application of statistical and mathematical methods to economic issues. I taught a wide range of courses to tens of thousands of students at both the undergraduate

and graduate levels, and for the last ten years of my academic career, I supervised and taught the statistics and econometrics courses offered by the University of Florida's College of Business in the undergraduate and MBA programs. I have published a number of articles containing original research in the areas of statistics and econometrics in peer-review journals. I also published six textbooks, including Statistics for Business and Economics, now in its tenth edition.

3. In 1977 I founded Info Tech, Inc., initially a statistical and econometric consulting firm. Today, Info Tech has approximately 200 employees, and is organized around two divisions: the Consulting Division, which performs statistical and econometric consulting; and the Systems Division, which develops, enhances, and maintains software for the transportation industry. I resigned my full-time faculty position in 1990 to devote full-time to Info Tech as its president and CEO. I remain an Adjunct Professor at the University of Florida.

4. Since its inception, Info Tech has provided consulting in litigation matters. In particular, I have analyzed economic data in the context of more than one hundred matters during the past thirty years. During that time, I have performed statistical and econometric analyses on a wide range of products and services, both in order to form opinions about liability issues and to measure

the amount of economic damage, if any. In the course of my career, I have been retained by private plaintiffs and defendants, and by governmental entities, such as the attorneys general of a number of states, including Pennsylvania, Florida, Alabama, New York, New Jersey, Virginia, Texas, and others to investigate and report on such issues.

5. I have been retained in numerous cases, including many class actions, to estimate the amount of economic damages. I have testified in federal and state courts in a number of different jurisdictions. I have been court-qualified as an expert in statistics and econometrics in both federal and state courts. I have testified on statistical and econometric issues, including the calculation of damages, in antitrust, breach of contract, business interference, employment discrimination, patent and trademark infringement, business valuation, and various other types of cases.

6. My complete CV is provided in the **Appendix** to this affidavit. The CV indicates all of my publications and lists all cases during the past five years in which I have testified as an expert at trial or by deposition.

7. Info Tech, at the request of Plaintiffs' attorneys in the above captioned matter and under my direct supervision, collected data pertaining to the operation of Florida's homestead tax shelter mechanism authorized by this State's

adoption and implementation of the Save Our Homes Amendment (SOHA), which became operational in 1995.[2] The **Appendix** which accompanies my affidavit reflects the collection, compilation and breakdown of this data.

8. For the five (5) years prior to 2000, the Office of Federal Housing Enterprise Oversight (OFHEO) reports that the average Florida home price increased by 3.3% per year, a rate that is only slightly higher than the SOHA cap of 3%.

9. **Exhibit** 1 of the Appendix is a composite for the entire state, all 67 counties included. This document reflects that for the first

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[2] The Save Our Homes Amendment was adopted by initiative petition in 1992 and was codified as Art. VII, Sec. 4, of the Florida Constitution. The Amendment was implemented by Section 193.155, Florida Statutes, passed as 5.62, Ch. 94-353, Laws of Florida. This implementing legislation used January 1, 1994 as the base evaluation of homesteads with the 3% cap first effective for 1995 taxes. Thus, it is my understanding that the just value assigned to property for tax roll purposes as of January 1, 1995 would have reflected a shelter effect for 1994 homestead property that increased in value by more than 3% from January 1, 1994 to January 1, 1995. Therefore, for purposes of my affidavit, any identified year, e.g. 1995-2007 will refer to the valuation of tax roll property as of January 1 of the designated year. Hence, the data for 2007 reflects the just value of property and the accumulated shelter effect or shelter allowance for homestead property as of January 1, 2007.

five years (1995 - 1999) that SOHA was in effect there was little impact from SOHA on ad valorem taxes. By 1999, the average assessed value of a non-SOHA (non-homestead) property was $69,634, compared to an average assessed value[3] of a SOHA (homestead) property of $86,688. By 1999, the aggregate shelter created by SOHA totaled $18.5 billion. As a result of this shelter build-up for homestead properties, non-SOHA properties, on average, were charged $46 more in taxes in 1999. My calculations of these overpayments were computed by disregarding the SOHA shelter and recomputing the millage rate as if the shelter did not exist, then applying the new millage rate to the non-SOHA property. By 1999, the average tax saving generated by the $25,000 homestead exemption was $523. The SOHA shelter had created an average tax overpayment by non-SOHA residents of approximately 8.8% of this $523 exemption. Assuming the tax shelter accrued equally over this 5-year period (1995-1999), the differential was equivalent to an average yearly per parcel ad valorem tax overpayment by non-SOHA properties of only $9.20.

10. This relatively small tax differential created by SOHA in its first five years of operation

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[3] The assessed value of SOHA parcels does not reflect the $25,000 homestead exemption. Thus, the differential between assessments for SOHA and non-SOHA parcels is attributable entirely to the fact that the assessments for non-SOHA parcels includes the valuation over and above the 3% cap contained in SOHA.

began to change significantly in tax year 2000. In years 1999 through 2007, the aggregate assessed valuation for non-SOHA residential properties increased from $273 billion in 1999 to $828 billion in 2007, with an accompanying **per parcel assessment for non-SOHA residential properties growing from $69,634 to $200,778, for a total increase of 288%. The 14% annual average increase over this period was well in excess of the 3% cap contained in SOHA**. Over this same period, SOHA's 3% cap operated to generate an aggregate tax assessment for SOHA properties that increased from $198 billion in 1999 to $567 billion in 2007, with an average per parcel assessment growing from $86,688 to $149,770[4]. The SOHA shelter expansion for this period operated to shift the aggregate of $15 billion in taxes from SOHA properties to non-SOHA properties, with non-SOHA picking up $11 billion, while commercial and industrial absorbed $4 billion.

11. As a result of this significant increase in the burden of ad valorem taxation shifted by the tax shelter accruing to SOHA parcels, the non-SOHA residences, which had incurred an aggregate tax overpayment of $179 million in 1999, were confronted with an

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[4]The reason this has increased at more than a 3% rate is because each year new homesteaders are coming on line at just value. The apples to apples effect of SOHA is more accurately and dramatically shown in **Exhibit 8.**

aggregate tax overpayment of $3 billion in 2007, now equal to $750 per parcel. Over this same period, the per parcel tax overpayment by commercial and industrial parcels swelled from $292 in 1999 to $3,411 in 2007.

12. The effect of SOHA's expanding shelter is also illustrated by aggregate tax comparisons. In 1999, non-SOHA residents comprised 47.8% of the total ad valorem tax rolls. However, by 2007, this percentage had increased to 50.5%. By the same token, although the number of SOHA or homestead parcels had increased by 166% from 1999 to 2007, the relative percentage share of such homesteads' contribution to the tax revenue rolls had increased only slightly from 34.5% to 34.6%.

13. While **Exhibit 1** reflects the effects of SOHA on a statewide basis, Info Tech has accumulated comparable data for each of the 67 counties of Florida. These data are reflected in **Exhibit 2 (1-67)**. **Exhibit 3** summarizes the impact of SOHA's tax shelter on those counties which were significantly impacted, i.e. coastal counties. This exhibit indicates that during the period 1999-2007, the coastal counties of Florida experienced extraordinary tax differentials due to the tax shelter on SOHA properties. On average, the tax overpayment by non-SOHA residences in these counties, which was attributable to SOHA's shelter, increased from $55

per parcel in 1999 to $858 per parcel in 2007, an increase of 1560%. The table appearing at **Exhibit 4** reflects the 2007 rank of these coastal counties in descending order from the highest per parcel overpayment to the smallest.

14. Within these coastal counties there is even great disparity in certain locations. Parcel locations in Florida are defined by the county, township, range, and section. In **Exhibit 5 (1-19)**, I have isolated all the sections in the top twenty counties listed in **Exhibit 4,** which are the most affected by SOHA's shelter effect, by analyzing only those in which the number of single family residential parcels with a just value of at least $750,000 comprised more than 50% of the total number of single family residential parcels in that section. There are only 19 counties shown in **Exhibit 5** since Pasco County had no sections that met this criteria. **Exhibit 5 – Footnote** identifies all sections used in the county wide calculations for **Exhibit 5**. **Exhibit 6** summarizes the salient features of this data. **On average the tax exactions upon non-SOHA residences in these areas, which were attributable to SOHA's shelter effect, *increased from $194 per parcel in 1999 to $2,189 per parcel in 2007, an increase of well over 1000%;* this represents an increasing differential effect equal to almost 3 times the statewide increase.**

15. In summary, in the period of 2000 to 2007, all three categories of Florida properties,

SOHA residential, non-SOHA residential and commercial and industrial, have undergone very differential ad valorem assessments and tax treatment. The following schedule portrays this differential:

Statewide (All Counties)						
	2000 Assessment		2007 Assessment		Percentage Increase	
	Aggregate	Per Parcel	Aggregate	Per Parcel	Aggre-gate	Per Parcel
SOHA Residential	$224,455,726,790	$89,602	$567,413,249,966	$149,770	253%	167%
Non-SOHA Residential	$320,401,175,393	$74,818	$828,394,481,048	$200,778	259%	268%
Commercial and Industrial	$117,201,523,520	$470,213	$243,241,552,130	$913,367	208%	194%

	2000 Taxes		2007 Taxes		Percentage Increase	
	Aggregate	Per Parcel	Aggregate	Per Parcel	Aggre-gate	Per Parcel
SOHA Residential	$4,713,570,263	$1,882	$10,536,864,052	$2,781	224%	148%
Non-SOHA Residential	$6,728,424,683	$1,571	$15,383,285,513	$3,728	229%	237%
Commercial and Industrial	$2,461,231,994	$9,874	$4,516,995,623	$16,961	184%	172%

	2000 Overpayment		2007 Overpayment		Percentage Increase	
	Aggregate	Per Parcel	Aggregate	Per Parcel	Aggre-gate	Per Parcel
SOHA Residential						
Non-SOHA Residential	$264,291,963	$62	$3,093,720,350	$750	1171%	1210%
Commercial and Industrial	$96,676,988	$388	$908,409,408	$3,411	940%	879%

Selected Coastal Areas						
	2000 Assessment		2007 Assessment		Percentage Increase	
	Aggregate	Per Parcel	Aggregate	Per Parcel	Aggregate	Per Parcel
SOHA Residential	$19,883,727,254	$270,648	$58,744,083,628	$502,980	295%	186%
Non-SOHA Residential	$49,778,488,938	$264,042	$121,837,545,695	$637,763	245%	242%
Commercial and Industrial	$6,021,667,873	$1,334,885	$13,984,092,534	$2,493,597	232%	187%

	2000 Taxes		2007 Taxes		Percentage Increase	
	Aggregate	Per Parcel	Aggregate	Per Parcel	Aggre-gate	Per Parcel
SOHA Residential	$408,411,758	$5,559	$1,074,429,290	$9,200	263%	165%
Non-SOHA Residential	$1,022,450,163	$5,423	$2,228,408,711	$11,665	218%	215%
Commercial and Industrial	$123,685,058	$27,419	$255,769,052	$45,608	207%	166%

	2000 Overpayment		2007 Overpayment		Percentage Increase	
	Aggregate	Per Parcel	Aggregate	Per Parcel	Aggre-gate	Per Parcel
SOHA Residential						
Non-SOHA Residential	$55,912,958	$297	$418,148,305	$2,189	748%	737%
Commercial and Industrial	$6,763,750	$1,499	$47,993,618	$8,558	710%	571%

The differentials in these tables are attributable[1] essentially to SOHA's shelter effect and are expected to expand with the passage of time and the inevitable effects of inflation.

16. In summary, the effect of the shelter created by SOHA was inconsequential over its first five years of operation from 1995 to 1999, even for the most sensitive areas – the beach or coastline exposed venues lying within the coastal counties. Over the state as a whole, the tax overpayment per non-SOHA residential parcel was $46 in 1999 which only equaled 3% of the total per parcel tax exaction for this year.

17. However, by the year 2007, the tax shelter differential created by SOHA had a substantial impact on the ad valorem taxation of affected Florida properties. The aggregate tax overpayments due to SOHA's shelter for homestead properties had now expanded to $15 billion, with residential non-SOHA parcels absorbing an average of $750 in additional tax overpayments and commercial and industrial parcels absorbing an average of $3,411 in such payments. In 2007, for all newly qualifying homesteaders, resident second homeowners and non-resident homeowners, 20% of their 2007 taxes were attributable to overpayments

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1 The flat $25,000 homestead exemption creates an initial disparity in the comparisons but this differential is not responsible for the expanding differentials noted here.

caused by the shelter conferred upon homesteaders by SOHA, and 20% of the taxes paid by the owners of commercial and industrial properties was attributable to such overpayment. **Moreover, in the most sensitive areas, the average tax overpayment attributed to the shelter of SOHA swelled to $2,189 per residential non-SOHA parcel, representing 19% of the annual taxes.**

18. New residents emigrating to Florida in the period of 1995 to 2007, who acquired a residence and obtained homestead status, were subjected to a far more burdensome ad valorem tax liability exposure than longtime homesteaders who benefited from the SOHA created tax disparity. While inconsequential for the first five years of SOHA (1995-1999), this disparity has since grown dramatically is a direct function of when an immigrant resident comes to Florida and the duration he or she has enjoyed homestead status. For example, a new Florida resident qualifying for homestead status in 1999 had to forego an average shelter benefit of $8,103 or 8.5% of the average residents' actual appraised valuation. The loss of the accumulated and accrued shelter in 1999 was tantamount to a loss of tax savings of $170. But a new resident to Florida seeking to acquire homestead status in 2007 was confronted with a much greater proportionate tax burden. A 2007 homesteader *vis a vis* a homesteader at SOHA's inception, on average had an increased valuation for taxation purposes of $108,915, which represents a

42.1% increase in the homestead parcel's actual appraised valuation, which in turn yielded an average of $2,023 in additional taxes.

19. The linkage between length or duration of Florida homestead residence status and shelter benefits can be illustrated in another way. A five (5) year delay in the first five (5) years (1995-1999) in homestead residence status only cost the average new resident a loss in annual tax savings of $170 due to SOHA. But, a delay of 12 years (1995-2007) in homestead residence status cost an average of $2,023 in property taxes, or 11.9 times the loss in the initial five years. As a result of SOHA, the additional taxes imposed on a new Florida resident has increased very significantly purely as a function of length or duration of homestead residence status. It is likely that this significant disparity between new homesteaders and longtime homesteaders will continue to increase over time.

20. To illustrate the dramatic disparity solely based on length of homestead residence, Info Tech has projected SOHA's effect over the next 20 years starting in 2008. In making this projection, we have assumed an average annual appreciation rate in the value of residences of 6.64%[2] and an average millage of 19.33 mills.[3]

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[2] Average Annual Percent Change in OFHEO State-Level House Price Index, 1977Q4-2007Q3

[3] Statewide average over the last 5 years.

Using these assumptions, a non-resident who acquired a residence that cost $200,000 in 1995 with a valuation assessment of $200,000 and a tax of $3,865, in 2027 will have a residence with an assessed valuation of $2,083,378 and a tax of $40,263. In contrast, the Florida homesteader, who acquired a comparable $200,000 residence in 1995 at an assessed valuation of $200,000 with a tax of $3,865, in 2027 will have a tax assessment of $503,748 and a tax, including the $25,000 homestead exemption, of only $9,252. This comparison is illustrated in **Exhibit 7. Exhibit 8** contains an illustration of the impact of SOHA on the tax structure of a new residence in 2007 *vis a vis* virtually the same residence which had been homestead since 1995.

21. Until Amendment 1 became effective, SOHA's shelter effect was limited to the loss of shelter benefits going forward. For example, a long-time Florida homesteader and a non-resident, both of whom were seeking to acquire the same new residence, could estimate the effect of SOHA's 3% cap going forward in quantifying the scope of shelter benefits which would or could accrue in favor of the homesteader. The point remains however, that before the adoption of Amendment 1, both the non-resident and existing long time homesteader were prospective purchasers who were looking at a level playing field in terms of the immediate tax cost associated with the acquisition of their new residence.

22. With the passage of Amendment 1, that playing field is no longer level. An existing homesteader who has an accumulated shelter build-up from SOHA's effect can apply that shelter benefit directly to offset[4] his or her tax liability for a newly acquired residence. A new homesteader, with no shelter accumulation, or a non-resident owner who cannot select homestead status, has no similar offset ability. The present value of this tax reducing offset or discount, using the average 2007 statewide tax savings of $2,023, which is discounted at 6 percent over 25 years, is equal to $27,412. On average, a long time Florida homesteader has a marketplace ability to discount the cost of a new residence by $27,412 and this discount can be used in the market place as an economic advantage.

23. Moreover, the impact of such a marketplace advantage increases significantly when both the former residence and new residence are valued at the higher end of the appraisal scale. For example, in the highline areas of coastal counties, the average 2007 tax savings attributable to the SOHA shelter is $7037. When this annual tax savings is discounted at 6 percent over 25 years, the present value of the expected savings is equal to $95,354. Based on the above, regardless of where a

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[4] A $500,000 limit exists on the portability feature of extending the shelter to new residence and the shelter extension is reduced if the homesteader is down-sizing in the acquisition of a new residence.

new resident or non-resident elects to settle or establish a vacation residence in Florida, he or she must struggle in the market place to compete economically with fully sheltered long time residents who are armed with the substantial expected tax savings at the acquisition of a residence due to a discount mechanism which is vested by Amendment 1 to their exclusive benefit.[5]

24. **Exhibit 9** shows the number and percentage of properties in Florida from 2004-2007 in which the property owner's mailing address was located outside the state of Florida. The data shows that approximately 22% of all residential and commercial and industrial properties have mailing addresses outside the state. This is an indication of the extent to which non-residents own property in Florida, but are precluded from the tax saving advantages provided by SOHA.

24. **Exhibit 10** presents an estimate of the number of new Florida residents that purchased homes during the period 2004-2007. U.S. Census data shows that 632,168 people moved into the

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[5] For the non-resident this market place disadvantage under Amendment 1 must be coupled with the exposure to anticipated non-sheltered valuation assessment escalation of up to 10 percent annually and the accompanying tax exaction. The non-resident in this environment is thus whipsawed between the absence of any operable tax discount at the outset of any residence acquisition and the accrual of unsheltered tax exactions going forward.

state of Florida from elsewhere in the United States in 2005. That would generate approximately 255,938 new households based on an estimated 2.47 persons per household. The Census Bureau also reports that 72.4% of all households in Florida own their own home; assuming that rate applies to new residents as well results in approximately 185,299 homes purchased by new Florida residents in 2005. The Census Bureau also reports that the number of people who moved to Florida in 2006 was 3.5% of the population or 645,425 people. If we apply that percentage to the Florida population estimates for 2004 and 2007, we obtain estimates for the number of new residents. Applying the same methodology I used for 2005, I have calculated the number of new residents that purchased homes for 2004, 2006, and 2007 (see Exhibit 10).

FURTHER AFFIANT SAYETH NOT.

/s/ James T. McClave
JAMES T. McCLAVE

STATE OF FLORIDA
COUNTY OF ALACHUA

SWORN and SUBSCRIBED TO before me this 13th day of March 2008 by JAMES T. McCLAVE, who is personally known to me or

who provided _____
as identification.

/s/ Joanne E. Cochran
Notary Public

Joanne E. Cochran
Printed Name of Notary
Seal

113 (2)

No. 10-276

In the Supreme Court of the United States

ROBERT C. BRUNER, ET AL.,

Petitioners,

v.

BERT HARTSFIELD, IN HIS OFFICIAL CAPACITY AS PROPERTY APPRAISER OF LEON COUNTY, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the Florida First District Court of Appeal

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BRIEF IN OPPOSITION FOR RESPONDENTS FLORIDA DEPARTMENT OF REVENUE; GARY NIKOLITS, PROPERTY APPRAISER OF PALM BEACH COUNTY, FLORIDA; AND FRANK DESGUIN, PROPERTY APPRAISER OF CHARLOTTE COUNTY, FLORIDA

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QUESTION PRESENTED

Whether Florida's ad valorem taxation cap on annual increases to the assessed valuations of property used as a homestead and corresponding portability provision violate the right to travel under the Privileges and Immunities Clause of the U.S. Constitution?

TABLE OF CONTENTS

Question Presented i

Table of Authorities iii

Opinion Below 1

Statement 1

Argument 6

Conclusion 14

TABLE OF AUTHORITIES

Cases

Bruner v. Hartsfield,
23 So. 3d 192 (Fla. Dist. Ct. App. 2009) 1

Bruner v. Hartsfield,
37 So. 3d 846 (Fla. 2010) 1

Lanning v. Pilcher,
16 So. 3d 294 (Fla. Dist. Ct. App. 2009) 6

Lanning v. Pilcher,
37 So. 3d 847 (Fla. 2010) 6

Nordlinger v. Hahn,
505 U.S. 1 (1972) ..... passim

Reinish v. Clark,
765 So. 2d 197 (Fla. Dist. Ct. App. 2000) ..... passim

Reinish v. Clark,
790 So. 2d 1107 (Fla. 2001) 6, 8

Reinish v. Clark,
534 U.S. 993 (2001) 6, 8

Saenz v. Roe,
526 U.S. 489 (1999) 12

Zobel v. Williams,
457 U.S. 55 (1982) 11

Statutes and Constitutional Provisions

42 U.S.C. § 1983 ..... 4, 5

42 U.S.C. § 1988 4

Fla. Const. art. VII, § 4(c) 1

Fla. Const. art. VII, § 4(d)(1) 1

Fla. Const. art. VII, § 4(d)(8) 1, 3

Fla. Const. art. VII, § 6 1

Fla. Const. art. VII, § 6(a) 3

Fla. Stat. § 192.042(1) 3

Fla. Stat. § 193.155 ..... 1, 3

Fla. Stat. § 196.011(1)(a) 3

Fla. Stat. § 196.011(1)(b) 3

Fla. Stat. § 196.012(18) 1

Fla. Stat. § 196.031 ..... 1, 3

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Florida First District Court of Appeal, *Bruner v. Hartsfield*, is reproduced in the Petitioner's Appendix ("Pet. App.") at App. 1 and is reported at 23 So. 3d 192 (Fla. Dist. Ct. App. 2009), *review denied*, 37 So. 3d 846 (Fla. 2010).

STATEMENT

This case involves a federal constitutional challenge to provisions of the Florida Constitution — commonly known as the "Save Our Homes" ("SOH") amendment — and its implementing Florida statute[1]

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[1] The constitutional provisions are set forth in article VII, sections 4(d)(1) and (8) of the Florida Constitution, which was renumbered in 2008 (SOH was previously located in article VII, section 4(c)). The implementing statute is section 193.155 of the Florida Statutes. The homestead exemption, which extends to owners of property used as a "permanent residence," exempts the first $25,000 of the property's assessment (later increased in 2008). Fla. Const. art. VII, § 6; Fla. Stat. § 196.031. "Permanent residence" is defined in Florida law as a person's "true, fixed, and permanent home." Fla. Stat. § 196.012(18).

[2] Petitioners abandoned their sections 1983 and 1988 arguments on appeal.

[3] Many of the traditional grounds for granting review are not asserted by petitioners, nor could they be — no circuit split exists; nor does any conflict exist among the state courts on the question; nor does any conflict exist with this Court's precedents. Instead, petitioners' only ground for review is their assertion that SOH violates the right to travel under the

that create exemptions from ad valorem taxation for real property used as a Florida homestead. These laws provide that a person who owns and uses real property as a homestead in Florida receives favorable tax treatment in two ways. First, the homestead property is eligible for the lesser of a three percent cap or the percentage change in the Consumer Price Index (whichever is less) on the amount by which the yearly-assessed value of the property may increase. Second, the laws create a portability feature that allows a portion of a property owner's existing homestead exemption to be transferred when the owner acquires a new homestead in Florida.

Petitioners are Florida residents who qualified for Florida's homestead exemption. They allege that they pay higher property taxes than owners of similarly situated and valued properties who acquired their homestead exemptions years earlier when housing prices were lower. Petitioners claim that the higher taxes they pay are unconstitutional, alleging Florida law violates their right to travel protected by the Privileges and Immunities Clause. The Florida trial and intermediate appellate courts rejected these contentions; the Florida Supreme Court declined to review those decisions.

The degree to which the SOH cap might benefit homestead owners in Florida depends upon the market conditions affecting the particular homestead, as of January 1 each tax year. In a market with increasing home values, the cap will generally provide homeowners and their families some degree of protection from the possibility of

escalating property taxes that might force them from their permanent residences. In a market with declining home values, the cap may have little or no effect.

In 2008, Florida voters approved an amendment to the Florida Constitution that added an exemption on the value of homestead property between $50,000 and $75,000, thereby potentially providing an additional exemption for eligible properties. Fla. Const. art. VII, § 6(a). Additionally, the amendment made portions of the SOH cap portable, meaning that portions of a property owner's existing homestead exemption may be transferrable to his or her newly-purchased and newly-established Florida homestead. *Id.* § 4(d)(8). Like the SOH cap, the benefit of this portability feature may or may not exist from year to year, and depends on the market conditions affecting the particular homestead property, as of January 1, each year. Fla. Stat. § 192.042(1).

Eligibility for SOH protections is based solely on the use of the property as the owner's homestead on January 1 of each tax year. *Id.* §§ 196.011(1)(a), 196.031. First-time applicants are required to furnish their social security number and proof of ownership. *Id.* § 196.011(1)(b). They are not asked how long they have lived in the State nor is duration of residence a consideration. Generally, a person must make initial application for SOH between January 1 and March 1 of the year for which the exemption is sought. *Id.* § 196.011(1)(a). Without further application, upon receiving the homestead exemption, filers become eligible for the SOH

assessed value cap and the potential for portability of a portion of their exemption if they sell their home and establish another Florida homestead. *Id.* § 193.155. The cap and the portability features are dependent on the continued use of the real property as the owner's homestead.

Within the last six years, the petitioners chose to make Florida their permanent residence, and voluntarily sought and were granted exemptions on their newly-qualifying homestead properties. Pet. App. 24a-26a. They filed suit challenging the SOH assessment cap and its portability feature, asserting that it unconstitutionally disadvantages newer residents of Florida. Pet. App. 44a-45a. Petitioners attempted to bring their action on behalf of a class of similarly situated residents who migrated to Florida within the four years preceding the filing of the complaint. Pet. App. 31a. They claimed that they have little or no homestead exemption benefits in contrast to the larger exemption benefit of longer-term Florida residents who purchased their properties years ago; they claimed this disparity is heightened by the new portability feature of the homestead exemption. Pet. App. 24a. Asserting that SOH violates their state and federal constitutional rights to equal protection and their right to travel under the Privileges and Immunities Clause, petitioners sought a declaratory judgment, a permanent injunction against the enforcement of these provisions, a refund of taxes paid under SOH and relief pursuant to 42 U.S.C. § 1983 and

attorney's fees pursuant to 42 U.S.C. § 1988.[2] Pet. App. 50a-66a.

The trial court dismissed the claims with prejudice. Pet. App. 10a. It found the decisions in *Nordlinger v. Hahn*, 505 U.S. 1 (1972), and *Reinish v. Clark*, 765 So. 2d 197 (Fla. Dist. Ct. App. 2000), were "applicable and dispositive" of the petitioners' claims. Pet. App. 12a-13a. The SOH provisions have a rational and legitimate basis "unrelated to residency" and, the trial court continued, the provisions "apply to all citizens regardless of the length of time Florida has been his or her residence." Pet. App. 13a-14a. The court noted that long-term and short-term residents "start off on the same footing" when acquiring homestead properties, "and the protections against tax increases are the same based upon market conditions and the value of the property as determined by appraisal and assessment from year to year." Pet. App. 14a. Petitioners' section 1983 claims were dismissed as moot. Pet. App. 15a.

Florida's First District Court of Appeal agreed with the trial court's analysis on the constitutional claims. Pet. App. 6a. It held the decisions in *Nordlinger* and *Reinish* disposed of the issue of the constitutionality of the SOH provisions; it likewise concluded that the portability feature did not alter that analysis. Pet. App. 5a-6a.

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[2] Petitioners abandoned their sections 1983 and 1988 arguments on appeal.

A petition for discretionary review was filed in the Florida Supreme Court. That court declined to accept jurisdiction. Pet. App. 19a.

ARGUMENT

The issues presented do not warrant this Court's review for a number of reasons.[3] First, the constitutional provisions challenged — commonly known as the "Save Our Homes" ("SOH") amendment — do not violate the right to travel under the Privileges and Immunities Clause. No length of residency is required to qualify for and begin receiving SOH benefits. Rather, upon purchasing a home and obtaining homestead status, each person — whether a lifelong Florida resident or one who has just moved here from another State — becomes eligible to receive exactly the same benefits under the SOH provisions. The Florida First District Court of Appeal found that a durational residency argument against SOH is meritless, having considered and rejected virtually identical challenges to SOH in *Reinish v. Clark*, 765 So. 2d 197 (Fla. Dist. Ct. App. 2000), *review denied*, 790 So. 2d 1107 (Fla.), *cert. denied*, 534 U.S. 993 (2001), and *Lanning v. Pilcher*, 16 So. 3d 294 (Fla. Dist. Ct. App. 2009), *review denied*, 37 So. 3d 847 (Fla. 2010).

Second, these decisions are entirely consistent with this Court's jurisprudence. The right to travel decisions of this Court cited by the petitioners are

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[3] Many of the traditional grounds for granting review are not asserted by petitioners, nor could they be — no circuit split exists; nor does any conflict exist among the state courts on the question; nor does any conflict exist with this Court's precedents. Instead, petitioners' only ground for review is their assertion that SOH violates the right to travel under the Privileges and Immunities Clause.

inapt because in those cases, the State based the benefits awarded on the length of time a person lived in the State, which is not a requirement for Florida homestead exemption eligibility. Because the decision below is consistent with settled law on the right to travel, review is unwarranted.

1. The right to travel claim as petitioners have framed it rises and falls on their underlying assertion that the SOH provisions are somehow tied to or conditioned on the length of residency of an applicant for a homestead exemption. But it is not disputed that the only qualification for the exemption is that the relevant *property* be used as the applicant's homestead on January 1 of any particular year. The prior residence or status of the *applicant* matters not; applicants who are permanent residents — like the petitioners — are eligible whether they have lived in Florida one day, a decade, or their entire lives.

This case is wholly controlled by the Court's decision in *Nordlinger v. Hahn*, 505 U.S. 1 (1992). In that case, the Court reviewed a constitutional challenge to California's acquisition value approach where similar properties had different tax burdens due to different acquisition values that were merely "incidental" to the actual purpose of the State's tax system. *Id.* at 9. The approach also provided for caps on assessment increases and portability. *Id.* at 5. As here, a resident of the State challenged the assessment system because "longer term property owners pay lower property taxes reflecting historic property values, while newer owners pay higher

property taxes reflecting more recent values." *Id.* at 6.

In rejecting the resident's equal protection challenge, the Court applied a rational basis review to the equal protection claim and found that at least two rational bases existed for the property tax amendment. *Nordlinger*, 505 U.S. at 12. First, the State had an interest in "local neighborhood preservation, continuity, and stability." *Id.* The State "legitimately can decide to structure its tax system to discourage rapid turnover in ownership of homes and businesses." *Id.* Second, an existing homeowner has "vested expectations" that are "more deserving of protection than the anticipatory expectations of a new owner at the point of purchase" because the new owner can evaluate the tax ramifications prior to buying. *Id.* at 12-13.

The Florida First District Court of Appeal's decision in *Reinish*[4] is also dispositive of the issues raised here. In *Reinish*, out-of-state residents who owned non-homestead real property in Florida for seasonal or vacation use challenged Florida's homestead exemption claiming that SOH violates, among other constitutional provisions, the Privileges and Immunities Clause. The court held that the SOH structure affords tax benefits based on the "*use* of the property rather than the *user*." *Reinish*, 765 So. 2d at 205. This critical distinction led the court to conclude that Florida's homestead exemption treated all

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[4] Both the Florida Supreme Court and this Court declined to review the First District Court of Appeal's decision. *See* 790 So. 2d 1107 (Fla. 2001), and 534 U.S. 993 (2001).

persons the same and that "there is no durational residency requirement." *Id.* The key issue in *Reinish* and this case is the same: whether the State identically treats all persons who obtain the benefits of SOH. The answer is resoundingly that it does.

Plaintiffs base their constitutional analysis on the faulty premise that SOH creates horizontal inequities because it is an alleged durational residency requirement. Pet. 26. This same argument was rejected in *Reinish*, 765 So. 2d at 213. SOH does not interfere with any fundamental right because "it does not preclude non-residents from purchasing, enjoying, or disposing of Florida residential property" and it does not *"infringe upon the Clause's guarantee that individuals may migrate between States to live and work."* *Id.* at 209, 210 (citation and quotation marks omitted) (emphasis added). Under SOH, all persons are eligible for the same tax benefits as soon as they establish a homestead residence, regardless of how long they have lived in Florida.

The essence of petitioners' horizontal inequities argument is that two neighbors, with similar or identical houses, could be paying different amounts of taxes because they bought their homes at different points in time. But the residential housing market — not state tax policy — creates differences between the neighbors' property values and thereby the amount of taxes owed. The value of properties

purchased at different times can vary from year-to-year based on market conditions.[5]

Longer-term homesteaders are subject to the same rules as new homesteaders. Both are eligible equally for whatever benefits result from being included in the SOH system, depending entirely on the ebbs and flows of the market for residential real estate. Under the cap, both receive the same assurance upon purchasing a homestead in Florida that a precipitous rise in home prices is less likely to force them out of their homes due to an inability to pay tax assessments. With portability, both receive the same assurance that they may at some point move within Florida and transfer a portion of their existing exemption to a new homestead. SOH provides all purchasers of homestead property the advantage of knowing with a high degree of certainty what their property taxes will be at the time of purchase and in subsequent years under the cap. *Nordlinger*, 505 U.S. at 13 (finding "[a] new owner has full information about the scope of future tax liability before acquiring the property, and if he thinks the future tax burden is too demanding, he can decide not to complete the purchase at all"). Because *Nordlinger* and *Reinish* are controlling and

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[5] As an example, a homestead owner who purchased her property twenty years ago bears the market risk from year-to-year of possible gains and losses. If her property gains in value in excess of the cap, she becomes eligible for favorable tax treatment (i.e., a capped assessed value) and the potential transfer of a portion of her exemption to a new Florida homestead (portability); if her property declines in value, she bears the risk of losing this favorable treatment as well as the loss of her property's value.

squarely on point, this Court's review is unwarranted.

2. Unlike SOH, the cases upon which petitioners rely all involve situations where eligibility for or the amount of state benefits was *based* on a person's duration of residence in the State. As shown, SOH and its portability feature are merely benefits flowing to any person who obtains a homestead exemption; no durational residency test applies. A homestead exemption is available to new and longtime Florida residents alike, as long as they are using the property on January 1 of a particular year as their homestead. The benefit of the cap and portability feature may or may not exist from year to year and depends on the market conditions affecting the particular homestead property as of January 1 each tax year.

In *Zobel v. Williams*, 457 U.S. 55, 57 (1982), by contrast, the Court struck down on equal protection grounds Alaska's plan to pay mineral income from a state fund based explicitly upon the number of years each resident had lived in the State. The disparate treatment was not, as petitioners assert, a mere "product" of the relevant statutes. Pet. 16. Instead, duration was the basis for the distinction. *Zobel*, 457 U.S. at 59 ("the dividend statute creates fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, *based on how long they have been in the State*.") (emphasis added). The other cases cited by the petitioners also conferred benefits explicitly on the duration of residency. *See* Pet. 15-16. The amount of a particular homestead exemption is both

explicitly set out in the SOH provisions as reliant on, and therefore is entirely a product of, the use of the property.

Saenz v. Roe, 526 U.S. 489 (1999), does not alter the analysis. In *Saenz*, the Court invalidated a statute that *explicitly* calculated welfare benefits on the basis of the duration of the applicant's residency in California. *Id.* at 505 ("The classifications challenged in this case — and there are many — are defined *entirely* by (a) the period of residency in California and (b) the location of the prior residences of the disfavored class members.") (emphasis added). A homestead exemption has nothing to do with the length of a property owner's Florida residency; it relates solely to the use of the property as a homestead on January 1 of each tax year.

Given that duration of residency plays no role in the availability of the homestead exemption in Florida, this case does not warrant further review. Florida courts have repeatedly held that SOH imposes no durational residency requirement; as such, no right to travel is implicated. Thus, no basis exists for applying heightened scrutiny to the SOH system.

3. This case also suffers from similar standing deficiencies that existed in *Nordlinger*, in which this Court found that "prudential standing principles" prohibited the plaintiff from raising her right to travel challenge because she had been living, first as a renter, then as a homeowner, in the State prior to raising her claims. 505 U.S. at 10-11. Petitioners imply that this same standing concern is not present

in this case. Pet. 10. But the facts in *Nordlinger* are identical to the situation here. Petitioners were Florida residents at the time of their challenge. SOH had no effect on petitioners' right to travel to or settle in the State. *See Nordlinger*, 505 U.S. at 10. Nor can petitioners here assert that SOH thwarts the right of others to move to this State and buy a home, another point the Court found important in *Nordlinger*. *Id.* at 11. Given the questionable standing of the petitioners, this case is not a good vehicle for the Court to review the questions they present.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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173

No. 10-276

FILED
OCT 22 2010
OFFICE OF THE CLERK

In The Supreme Court of the United States

ROBERT C. BRUNER, et al.,

Petitioners,

vs.

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Florida First District Court Of Appeal

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Florida's ad valorem taxation cap on annual increases to the assessed valuations of property used as a homestead and corresponding "portability" provision violate the Right to Travel under the Privileges and Immunities Clause of the U.S. Constitution.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
ARGUMENT	8
A. THIS COURT DECIDED THIS ISSUE IN *NORDLINGER*	8
1. SOHA AND AMENDMENT 1 ARE NOT DURATIONALLY STRUCTURED BASED ON LENGTH OF RESIDENCY	11
2. RATIONAL BASIS ANALYSIS WAS PROPERLY APPLIED BELOW	17
3. AS WAS THE CASE IN *NORDLINGER*, THESE PETITIONERS LACK STANDING TO BRING THIS CLAIM	19
CONCLUSION	21

TABLE OF AUTHORITIES

Page

CASES

Allen v. Wright, 468 U.S. 737 (1984) 19

Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986) 12, 17

Baldwin v. Fish & Game Comm'n of Montana, 436 U.S. 371 (1978) 17

Caplin & Drysdale v. United States, 491 U.S. 617 (1989) 19

Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization, Inc., 579 S.E.2d 200 (Ga. 2003) 15

Deluccio v. Havill, 25 So. 3d 31 (Fla. 1st DCA 2009) 7, 8

Deluccio v. Havill, 35 Fla. L. Weekly D2052 (Fla. 1st DCA Sept. 13, 2010) 7

Dunn v. Blumstein, 405 U.S. 330 (1972) 11

Heckler v. Mathews, 465 U.S. 728 (1984) 18

Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) 11, 12

Lanning v. Pilcher, 16 So. 3d 294 (Fla. 1st DCA 2009) 6, 7

Lanning v. Pilcher, 37 So. 2d 847 (Fla. 2010) 7

Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287 (1998) 4

TABLE OF AUTHORITIES – Continued

Page

Maxwell v. Bugbee, 250 U.S. 525 (1919) 4

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) 11, 17

Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972) 19

Nordlinger v. Hahn, 505 U.S. 1 (1992) ..... *passim*

Nordlinger v. Lynch, 225 Cal.App.3d 1259 (Cal. Ct. App. 1990) 9

Osterndorf v. Turner, 426 So. 2d 539 (Fla. 1982) 2, 12

Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000) 2, 4, 5, 6, 17

Reinish v. Clark, 790 So. 2d 1107 (Fla. 2001) 4

Reinish v. Clark, 534 U.S. 993 (2001) 4

Saenz v. Roe, 526 U.S. 489 (1999) 8, 12

Shaffer v. Carter, 252 U.S. 37 (1920) 18

Shapiro v. Thompson, 394 U.S. 618 (1969) 11, 13

Smith v. Welton, 729 So. 2d 371 (Fla. 1999) 3

Toomer v. Witsell, 334 U.S. 385 (1948) 13

Zingale v. Powell, 885 So. 2d 277 (Fla. 2004) 3

Zobel v. Williams, 457 U.S. 55 (1982) ... 12, 13, 14, 15, 16

FLORIDA CONSTITUTIONAL PROVISIONS & STATUTES

Fla. Const. art. VII, § 4 ..... 6, 15

Fla. Const. art. VII, § 4(d) 3

TABLE OF AUTHORITIES – Continued

Page

Fla. Const. art. VII, § 4(d)(1) 2
Fla. Const. art. VII, § 4(d)(8) 3
Fla. Const. art. VII, § 6 ..... 2, 3, 15
Fla. Const. art. X, § 7 2
Flat. Stat. § 193.155 ..... 1, 3
Fla. Stat. § 196.011(1)(a) 2, 3

U.S. CONSTITUTIONAL PROVISIONS AND FEDERAL STATUTES

42 U.S.C. § 1983 5
42 U.S.C. § 1988 5

OTHER AUTHORITIES

Fla. Admin. Code R. 12D-8.0062 16

STATEMENT OF THE CASE[1]

Petitioners, relocated resident owners of homestead property in Florida, seek review of a Florida constitutional provision which caps annual increases in assessed valuation for property used as a homestead and provides a "portability" option for homeowners. Article VII, section 4, Florida Constitution, commonly known as the Save Our Homes Amendment (SOHA), along with its implementing statute, section 193.155, Florida Statutes, constitutionally limits increases in the annual assessed value for these homestead properties to three percent of the assessment for the prior year, or the percent change in the Consumer Price Index, whichever is less. The portability feature, added by constitutional amendment in 2008, allows homestead owners to transfer all or a portion of any benefit received under the SOHA to a new Florida homestead.

This challenge comes eighteen years after a similar acquisition value system of taxation was upheld by this Court's decision, *Nordlinger v. Hahn*, 505 U.S. 1 (1992), despite "staggering" differences in tax burdens. The Florida trial court and court of appeal that heard this case expressly rejected Petitioners' claim that the cap provided by the SOHA, including portability, violates the Right to Travel doctrine of the Privileges and Immunities Clause, or

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[1] References to the Petition and its Appendix are cited as "Pet. ___" and "Pet. App. ___," respectively.

the Equal Protection Clause, citing *Nordlinger* and the relevant Florida precedent, *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000). The Florida Supreme Court denied Petitioners' petition for review to that court.

Under the constitutional and statutory provisions of the State of Florida, all persons having legal or equitable title to real estate and maintaining a permanent residence thereon qualify for Florida's homestead exemption, regardless of whether the property owner is a life-long citizen of Florida or a recent migrant. Fla. Stat. § 196.011(1)(a). In Florida, the protection of the primary home has a history of special significance. *See Osterndorf v. Turner*, 426 So. 2d 539, 540 (Fla. 1982). Under the Florida Constitution, homestead property has been protected from forced sale since 1868. Florida's citizens first created a $5,000 property tax exemption on a homeowner's residence in 1934. Fla. Const. art. X, § 7 (1885) (as amended); *Osterndorf*, 426 So. 2d at 540. In 1980, Florida voters increased the exemption to $25,000. Fla. Const. art. VII, § 6 (Pet. at 7). Although a previous version of the exemption was struck down in part by the Florida Supreme Court because it contained a five-year residency prerequisite, the current version does not have any such requirement. *Osterndorf*, 426 So. 2d at 545.

In 1992, in an effort to keep the taxes on their homes manageable, Florida voters approved the SOHA cap on the annual increase to assessed valuations of homestead property. Fla. Const. art. VII,

§ 4(d)(1). The SOHA "was designed to ensure that citizens on fixed incomes will not lose their homes on the tax block due to the rising value of Florida property." *Smith v. Welton*, 729 So. 2d 371, 373 (Fla. 1999). In January 2008, voters approved Amendment 1, which allowed the SOHA cap to become "portable," meaning that all or a portion of a property owner's existing benefit under the SOHA, if any, may be transferable to a newly-established Florida homestead. Fla. Const. art. VII, § 4(d)(8). Amendment 1 also increased the existing homestead exemption. Fla. Const. art. VII, § 6.

By definition, the SOHA cap and portability applies to properties which receive the homestead exemption. Fla. Const. art. VII, § 4(d); Fla. Stat. § 193.155; *Zingale v. Powell*, 885 So. 2d 277, 285-86 (Fla. 2004) (providing both the exemption and SOHA cap are "parts of a coordinated constitutional scheme relating to taxation and have as their underlying purpose the protection and preservation of homestead property"). There is no durational residency requirement to receive any benefit under the Florida homestead provisions. First-time applicants are only required to show proof of ownership and supply their social security number. Fla. Stat. § 196.011(1)(a).

In 1998, Chicago residents who owned a parcel of land in Florida brought a challenge to the constitutionality of the homestead exemption and to the SOHA on the grounds that they violated the Equal Protection Clause, the Privileges and Immunities Clause, including the Right to Travel, and the

"dormant" Commerce Clause. *Reinish*, 765 So. 2d at 201. The trial court dismissed the complaint based on the plaintiffs' failure to state a claim, and the First District Court of Appeal affirmed. *Id.* at 215. That court, relying primarily on *Nordlinger* and *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287 (1998), ruled that the underlying classification in the exemption (which is the same for the SOHA) is based on the *use* of the property, not the *user*. *Reinish*, 765 So. 2d at 205-06. The First District found that the United States Constitution does not preclude states from adopting "justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits" and that inequalities that result only occasionally and incidentally in the application of a tax system that is not arbitrary in its classification do not defeat the law. *Id.* at 208-209 (citing *Lunding,* 522 U.S. at 310; *Maxwell v. Bugbee*, 250 U.S. 525, 543 (1919)). Although review of the *Reinish* decision was sought, it was denied both by the Florida Supreme Court and this Court. 790 So. 2d 1107 (Fla. 2001); 534 U.S. 993 (2001).

Between 2004 and 2007, each of the Petitioners chose to move from their respective states to Florida and seek the benefits of Florida's homestead exemption, and the SOHA. (Pet. at 12-13; Pet. App. at 24a-26a). In 2008, each Petitioner was able to vote on Amendment 1, which established the additional benefits of portability and an increased homestead exemption amount. (Pet. at 12-13, 4-6).

In November 2007, Petitioners brought suit, seeking a declaration that the SOHA cap is unconstitutional under the Equal Protection Clause of both the U.S. and Florida Constitutions and the Right to Travel. After the Florida voters approved "Amendment 1" to the Florida Constitution on January 29, 2008, the Petitioners amended their complaint to challenge the new portability feature. (Pet. App. at 20a-68a). They sought to permanently enjoin the Florida Department of Revenue, various tax collectors, property appraisers, counties, cities, and school boards ("Respondents") from taxing their homestead properties under SOHA or applying the portability provision of Amendment 1. (Pet. App. at 61a) Petitioners further asked for a refund of taxes paid under SOHA as well as pre-judgment and post-judgment interest for four years, and an award of attorney's fees. (Pet. App. at 57a-58a).[2]

Respondents filed various motions to dismiss, which the trial court granted. (Pet. App. at 8a-18a). The trial court held that *Nordlinger* and *Reinish* were dispositive "[a]s to any claim by the [Petitioners] that SOHA violate[s] the identified provisions of the Constitution of the United States due to their residency status." (Pet. App. at 12a). The trial court reasoned that the SOHA benefits "have a rational and

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[2] Plaintiffs also sought declaratory, supplemental, and injunctive relief pursuant to 42 U.S.C. § 1983 and attorney's fees pursuant to 42 U.S.C. § 1988, but abandoned those arguments on appeal after being dismissed at the trial level.

legitimate basis that is unrelated to residency," and that "the protections contained in SOHA apply to all citizens regardless of the length of time Florida has been his or her residence." (Pet. App. at 13a-14a). Finally, the trial court found it important that each of the Petitioners "start[ed] off on the same footing, and the protections against tax increases are the same based upon market conditions and the value of the property as determined by appraisal and assessment from year to year." (Pet. App. at 14a). The Court concluded that "*Nordlinger* clearly established the principle that a state legislature's interest in 'neighborhood preservation, continuity and stability' provided a rational basis for treating new and older residents differently in their tax assessments." *Nordlinger*, 505 U.S. at 12-13. (Pet. App. at 13a).

On appeal, the First District affirmed, emphasizing that the matter had already been conclusively decided on both the federal and state levels, finding:

> This court has already considered and rejected virtually identical constitutional challenges to SOHA in *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000) and *Lanning v. Pilcher*, 16 So. 3d 294 (Fla. 1st DCA 2009). The holdings in *Reinish* and *Lanning* that section 4, article VII is not unconstitutional for the reasons claimed are not changed by the passage of Amendment 1.

(Pet. App. at 5a-6a). The Florida Supreme Court declined to accept jurisdiction of Petitioners' appeal from the First District. (Pet. App. at 19a).

As Petitioners note, this is chronologically the second of three similar cases challenging the SOHA in the Florida courts since 2007. The first of these cases is a challenge brought by out-of-state owners of second or vacation homes within Florida against the SOHA cap based on the dormant Commerce Clause, the Privileges and Immunities Clause, the Right to Travel, Equal Protection, and Due Process. However, unlike this case, the homeowners did not challenge portability, as suit was brought before the passage of Amendment 1. The challenge was rejected by the trial court, and affirmed on appeal to the Florida appellate court. *Lanning v. Pilcher*, 16 So. 3d 294 (Fla. 1st DCA 2009). As in this case, the Florida Supreme Court denied review, 37 So. 3d 847 (Fla. 2010), and the challengers filed a Petition for a Writ of Certiorari with this Court, in Case No. 10-281.

The final case is a challenge of out-of-state owners of second or vacation homes to the SOHA and the new portability provision under the dormant Commerce Clause and Privileges and Immunities Clause. The trial court ruled the SOHA, as amended, constitutional and dismissed the case. However, the court also dismissed the case for lack of subject matter jurisdiction. *Deluccio v. Havill*, 25 So. 3d 31 (Fla. 1st DCA 2009). The Florida First District ruled this was error, and reversed and remanded on this basis. *Id.* On remand, the court entered an order ruling that the SOHA and the portability provision are constitutional. The Florida First District has affirmed that order. *Deluccio v. Havill*, 35 Fla. L.

Weekly D2052 (Fla. 1st DCA Sept. 13, 2010). The *Deluccio* plaintiffs have sought review of the decision in the Florida Supreme Court.

ARGUMENT

A. THIS COURT DECIDED THIS ISSUE IN *NORDLINGER*.

This case does not warrant further review, as an analogous tax structure was upheld by this Court in an 8-1 decision in *Nordlinger*, which remains the established law on this subject. 505 U.S. 1 (1992). Despite Petitioners' attempts to distinguish their case as one raising a challenge falling under the "Right to Travel" doctrine of the Privileges and Immunities Clause under this Court's analysis in *Saenz v. Roe*, 526 U.S. 489 (1999), the Petitioners' arguments do not establish any violation of such a right. Instead, their claim is nothing but a reargument of the issues raised and decided in *Nordlinger*.

In *Nordlinger*, California homeowners saw their taxes on their homes double or triple as the median price of homes dramatically increased due to a boom in the real estate market. 505 U.S. at 4. In response to such runaway increases, which outpaced growth in income and ability to pay the assessments, California voters adopted Proposition 13, which capped real property taxes at one percent of a property's full cash value. In addition, there was a two percent cap on annual increases in the assessed valuations. *Id.* at 5.

The new provisions also contained an exemption which allowed certain homeowners to have a portability option. *Id.*

Over time, California's system created "dramatic disparities in the taxes paid by persons owning similar pieces of property" which resulted in "staggering" differences between the amounts paid by homeowners, because the value was re-set when the property changed hands. *Id.* at 6. After purchasing her house in 1988, Ms. Nordlinger paid taxes that were five times more than some of her neighbors, who had owned comparable homes for a number of years. *Id.*

Ms. Nordlinger argued that the effect of the taxing plan infringed on the constitutional Right to Travel and warranted heightened Equal Protection Review. *Id.* at 9. The trial court dismissed the complaint, and the California Court of Appeal affirmed, finding that the law was supported by at least two rational bases. *Id.* at 8; *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 1273 (Cal. Ct. App. 1990). The Court of Appeal also rejected the idea that the system infringed upon the Right to Travel because the system "bases each property owner's assessment on acquisition value, irrespective of the owner's status as a California resident or the owner's length of residence in the state." *Nordlinger*, 505 U.S. at 9. Any benefit to longtime California residents was deemed "incidental." *Id.* After the Supreme Court of California denied review, this Court granted certiorari. *Id.*; 502 U.S. 807 (1991).

Ms. Nordlinger's claim that California's system infringed upon the constitutional right to travel was dismissed at the onset of this Court's review. Her allegations that the portability exemptions to California's taxing plan required heightened review were dismissed because Ms. Nordlinger herself had not "been impeded from traveling or settling" within the state, and had, in fact, lived in California prior to being affected by the taxing scheme. *Id.* at 10-11. The Court dismissed her remaining claims under a rational basis review, finding first, "the State has a legitimate interest in local neighborhood preservation, continuity, and stability," and second, "the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner." *Id.* at 12.

This case is nearly identical, and is supported by the same rational bases. Florida voters amended their state Constitution to provide homestead owners with a system of tax stability in the face of dramatically rising property values. (Pet. at 3-6). The Florida courts properly followed the precedent of this Court by rejecting Petitioners' contention that the SOHA and portability provision presented Equal Protection and Right to Travel violations.

1. SOHA AND AMENDMENT 1 ARE NOT DURATIONALLY STRUCTURED BASED ON LENGTH OF RESIDENCY.

Petitioners incorrectly characterize SOHA and Amendment 1 as being "durationally structured benefits" akin to those this Court has found unconstitutional in numerous other circumstances. (Pet. at 15-16). Petitioners compare apples to oranges. Although Petitioners later acknowledge that the SOHA and portability are not "a typical durational residency regulatory scheme" (Pet. at 26-27), Petitioners erroneously cite and attempt to compare Florida's SOHA to laws which were struck down for containing exactly such a durational residency requirement. In *Shapiro v. Thompson*, 394 U.S. 618 (1969), the Court struck down three laws that expressly prevented the provision of welfare payments to persons who had resided within Pennsylvania, Connecticut, or the District of Columbia for less than a year. *Id.* at 622-627. In *Dunn v. Blumstein*, 405 U.S. 330 (1972), Tennessee required voters to reside in-state for 12 months and in-county for three months before granting them the right to vote. *Id.* at 333. In *Memorial Hospital v. Maricopa County,* 415 U.S. 250 (1974), Arizona required indigents to reside in the same county for 12 months before gaining entitlement to free nonemergency medical care. *Id.* at 252. In *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), New Mexico granted annual property tax exemptions to residents who served in the Armed Forces, but expressly limited the exemptions based on

the date of residency. *Id.* at 614. In *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986), New York expressly gave preference in its hiring of civil servants to New York residents who were veterans who served during time of war and had resided within the state at the time of entering military service. *Id.* at 900. In *Saenz v. Roe*, 526 U.S. 489 (1999), California enacted a statute expressly limiting the maximum welfare benefits available to families that resided within the state for less than 12 months. *Id.* at 492.

By contrast, nothing in SOHA or Amendment 1 in any way limits the rights of recently-migrated Florida residents to obtain the exact same benefits and entitlements as life-long Florida residents. There is no express provision of either SOHA or Amendment 1 which in any way distinguishes between Florida citizens based on their length of state residence. Although at one time the Florida homestead exemption contained a five-year residency prerequisite, this was struck down in 1982, and never reinstated. *Osterndorf v. Turner*, 426 So. 2d at 545. Thus, the above cited cases relied on by Petitioners are inapposite.

In the case principally relied upon by Petitioners, *Zobel v. Williams*, 457 U.S. 55 (1982), the Court struck down an Alaska statute which fixed permanent distinctions between its citizens based on their length of residency, and used those distinctions to differ the distribution of income derived from the sale of natural resources in the state. *Id.* at 56. However,

Petitioners do not base their reliance on the *Zobel* majority opinion, wherein the Court rejected the connection between the statute and the Privileges and Immunities Clause:

> The Alaska statute does not simply make distinctions between native-born Alaskans and those who migrate to Alaska from other states; it does not discriminate only against those who have recently exercised the right to travel, as did the statute involved in *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The Alaska statute also discriminates among long-time residents and even native-born residents. For example, a person born in Alaska in 1962 would have received $100 less than someone who was born in the State in 1960. Of course the native Alaskan born in 1962 would also receive $100 less than the person who moved to the State in 1960.
>
> *The statute does not involve the kind of discrimination which the Privileges and Immunities Clause of Art. IV was designed to prevent.* That Clause "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v. Witsell,* 334 U.S. 385, 395, 68 S.Ct. 1156, 1161, 92 L.Ed. 1460 (1948). *The Clause is thus not applicable to this case.*

Id. at 59, n.5 (emphasis added).

Instead, Petitioners rely on language in the concurring opinions regarding the inequity of a state mandating a difference in the provision of its benefit based on the length of residency within that state. *See id.* at 68 (Brennan, J., concurring):

> For if each State were free to reward its citizens incrementally for their years of residence so that a citizen leaving one State would thereby forfeit his accrued seniority, only to have to begin building such seniority again in his new State of residence, then the mobility so essential to the economic progress of our Nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive.

See also, id. at 73 (O'Connor, J., concurring) ("Alaska's distribution plan distinguishes between long-term residents and recent arrivals. Stripped to its essentials, the plan denies non-Alaskans settling in the State the same privileges afforded longer term residents.").

Petitioners essentially allege that this language equates Alaska's explicit grant of extra payments based solely on the length of residency in Alaska that the Court struck in *Zobel* to SOHA and Amendment 1, which give no preferential treatment based on the number of years of state residency. Such an argument ignores the clear lack of any reference at all to state residency in SOHA or Amendment 1. Based on the plain language of the Florida homestead exemption

and the SOHA, contained in Article VII, sections 4 and 6, Florida Constitution, all homestead owners are treated *exactly the same*. All have the rights to the SOHA cap and portability, and all homesteads are assessed as of January 1st. Although the SOHA results in certain differences in assessed value from property to property, whatever disparity exists between long-term residents and more recent arrivals is primarily the result of market-related forces, and is not proportionate to length of residency. This type of acquisition value assessment system was approved by this Court in *Nordlinger*. *See also, Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization, Inc.*, 579 S.E.2d 200 (Ga. 2003) (ruling that an acquisition value property tax scheme was valid under both equal protection and right to travel analyses pursuant to *Nordlinger*; concluding that nothing in the tax scheme "treats new arrivals to the County any differently from long-term County residents seeking to purchase a home there").

Petitioners also ignore the fact that *Nordlinger*, containing the very same acquisition value taxing caps and portability as Florida's plan here, was decided *ten years after Zobel*. *Nordlinger* was delivered by Justice Blackmun, who had joined Justice Brennan's *Zobel* concurrence cited by Petitioners. Justice O'Connor also joined the majority opinion in *Nordlinger*. 505 U.S. at 3. Even with the knowledge of its own precedents, the Court did not strike California's taxing scheme, nor even discussed whether

it should be stricken based on *Zobel*, aside from the Court's determination that the petitioner lacked standing to assert a Right to Travel argument. Similarly, *Saenz*, decided seven years after *Nordlinger*, fails to mention that case at all.

Petitioners do not actually object to any express discrimination. Instead, Petitioners complain about the disparity created, not by way of any discrimination in the application of the provisions of the law to new residents, but based on the interaction of the Florida law with the private real estate market. Because any benefit provided by the SOHA is determined by the real estate market in any given year, the assessed value is not predictable, and any benefit received is not proportional to residency. In some cases, no benefit at all will be provided. For example, in a down market, the Florida Department of Revenue's "recapture rule" requires property appraisers to increase the assessment by either three percent or the percentage change in the Consumer Price Index in any year that the property's just value exceeds its assessed value, regardless of whether there has been an increase in just value. Fla. Admin. Code R. 12D-8.0062. This could result, over time, in an equalization of the just value and assessed value, so that no actual "benefit" is provided by the SOHA cap. In sum, Petitioners' complaint is not that they are being treated unfairly by Florida law, but rather by the real estate market.

2. RATIONAL BASIS ANALYSIS WAS PROPERLY APPLIED BELOW.

Because this case is controlled by *Nordlinger* and *Reinish*, and not by any right to travel case such as *Saenz*, the Florida courts correctly used the rational basis standard of review. Although freedom to travel is recognized as a fundamental right under the United States Constitution, SOHA and Amendment 1 in no way impede that right. *Reinish*, 765 So. 2d at 207-210; *see also, Soto-Lopez*, [illegible] U.S. at 905 ("only where a State's law 'operates [illegible] penalize those persons . . . who have exercised their constitutional right to interstate migration' is heightened scrutiny triggered."); *Mem'l Hosp.*, 415 U.S. at 258 (same). The right "to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state" is protected by the Privileges and Immunities Clause. *Reinish*, 765 So. 2d at 209. However, Petitioners' claim is more along the line of an Equal Protection Clause claim, and not one related to their ability to move freely across state borders and be treated the same as citizens therein, bringing into question issues of national equality. *See Baldwin v. Fish & Game Comm'n of Montana*, 436 U.S. 371, 383 (1978) ("Only with respect to those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally."). In

that context, the question becomes whether the difference in taxation treatment is discriminatory against non-residents, *Shaffer v. Carter*, 252 U.S. 37, 53 (1920), and clearly here it is not.

As there is no durational residency requirement within SOHA or Amendment 1, under the Equal Protection analysis framework, all that is required is that Florida have a rational basis for its plan. *Nordlinger*, 505 U.S. at 11. This Court determined that the policy concerns in *Nordlinger*, which mirror those here, were "exceedingly persuasive," and that classifications serving to protect legitimate expectation and reliance interest do not deny equal protection of the laws. *Id.* at 13 (citing *Heckler v. Mathews*, 465 U.S. 728, 746 (1984)). Florida's property tax system is designed to "promote the stability and welfare of the state by encouraging property ownership" to protect the family from economic misfortune. *Reinish*, 765 So. 2d at 206-207 (citations omitted). The State aims to promote and protect taxpayers' financial ability to purchase and maintain the primary family shelter. *Id.* at 210. At the same time, SOHA and Amendment 1 still provide no greater or lesser benefits to recent Florida immigrants than they do to life-long Florida citizens purchasing their first Florida homestead. This purpose easily satisfies the rational basis standard applied in *Nordlinger* and *Reinish*, and the Florida courts correctly applied that standard in dismissing Petitioners' complaint.

3. AS WAS THE CASE IN *NORDLINGER*, THESE PETITIONERS LACK STANDING TO BRING THIS CLAIM.

In *Nordlinger*, this Court rejected the standing of the petitioner to bring a claim of a violation of the "right to travel doctrine" because the petitioner had already resided in California prior to her purchase of a home, and therefore was not a party who had been "impeded from traveling or from settling in California." 505 U.S. at 10-11. As the Court explained:

> This Court's prudential standing principles impose a "general prohibition on a litigant's raising another person's legal rights." *Allen v. Wright*, 468 U.S. 737, 751, 82 L. Ed. 2d 556, 104 S. Ct. 3315 (1984). *See also Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166, 32 L. Ed. 2d 627, 92 S. Ct. 1965 (1972). Petitioner has not identified any obstacle preventing others who wish to travel or settle in California from asserting claims on their own behalf, nor has she shown any special relationship with those whose rights she seeks to assert, such that we might overlook this prudential limitation. *Caplin & Drysdale v. United States*, 491 U.S. 617, 623, n. 3, 105 L. Ed. 2d 528, 109 S. Ct. 2646, 2667 (1989). Accordingly, petitioner may not assert the constitutional right to travel as a basis for heightened review.

Id. at 11.

Just like the petitioner in *Nordlinger*, Petitioners here lack the requisite standing to even raise the question of the right to travel doctrine's applicability. Petitioners summarily claim that their standing is somehow different than that of the *Nordlinger* petitioner because Petitioners describe themselves as "newly migrated resident homesteaders in Florida." (Pet. at 10). However, each of the Petitioners had been in Florida for a number of years prior to the lawsuit.[3] The system of state taxation of homesteads in Florida did not prevent or impede any of the Petitioners from interstate travel or migration, and did not treat them differently once they entered the State from any other Florida resident. Because there is no durational residency requirement for application of the homestead exemption and SOHA cap, at the time each Petitioner moved to Florida and became a homestead owner, each Petitioner received the benefits of the Florida law. (Pet. App. at 12a).

The lack of standing is particularly evident for the Petitioners' challenge to Amendment 1, establishing portability. Each Petitioner was a resident of the state at the time Amendment 1 was approved in

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[3] Petitioner Stanley Chamberlin owned the property in Florida which he eventually homesteaded for *seven years* prior to seeking the state's exemption. (Pet. at 13). Petitioner Deborah Plitnick acquired her homestead parcel in 2004, *three years* prior to joining this lawsuit. (Pet. at 13). Petitioners Robert and Katherine Bruner migrated to Florida in 2005, *two years* prior to bringing the lawsuit. (Pet. App. at 24a).

2008, and therefore had the opportunity to vote on this provision. Thus, these Petitioners have no more claim to standing regarding any interference with the "right to travel" than the *Nordlinger* petitioner, whose claim of standing this Court expressly rejected because she had lived in California prior to bringing suit, and was not impeded in her ability to move to the state and take up permanent residence therein.

The Florida appellate court did not err in rejecting the Petitioners' challenges and no clarification of the law is needed, as the decision in this case is aligned with this Court's decision in *Nordlinger*.

CONCLUSION

Because this Court has already decided a nearly identical case on this issue, and the Florida courts applied that precedent in denying the Petitioners' claims, there is no need for this Court to accept the

Petition. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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174 (4)

No. 10-276

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT C. BRUNER and KATHERINE S. BRUNER, husband and wife, et al.,

Petitioners,

vs.

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida; et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Florida First District Court Of Appeal

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REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

REPLY 1

CONCLUSION 4

TABLE OF AUTHORITIES CITED

PAGES

CASES

Saenz v., Roe,
526 U.S. 489 (1999) 2, 3,4

Nordlinger v. Hahn
505 U.S. 1 (1992) 3, 4

Zobel v. Williams,
457 U.S. 55 (1982) 2, 3

CONSTITUTIONAL PROVISIONS

Florida Amendment 1 (2009) 1, 2

Florida Save Our Homes Amendment (SOHA) . .. 1, 2

REPLY

The State Scheme Setting the Level of Tax Benefits Through Duration of Residential Ownership Violates The Privileges And Immunities Clauses

The Respondent Florida Department of Revenue,[1] along with the property appraisers of Palm Beach and Charlotte Counties, confuse the operative features of SOHA and Amendment 1 ("portability").

First, on page 7 of the State Brief, these Respondents state that, "upon purchasing a home and obtaining homestead status," a lifelong Florida resident or a new migrant resident from another state becomes "eligible to receive exactly the same benefit under the SOHA provisions." The spinning efforts crystallize with the next paragraph: "The right to travel decisions of this Court cited by Petitioners are inapt because in those cases, the State based the benefit awarded on the length of time a person lived in the State, which is not a requirement for Florida homestead exemption eligibility."

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[1] For the convenience of the Court, we will refer to the brief filed by the Florida Department of Revenue and joined by various other officials as the "State Brief" and the other brief, filed by Leon County and others, as the "Leon County Brief."

To the contrary, under SOHA and Amendment 1, unlike traditional homestead exemption,[2] the length of time a person has been a resident of Florida and owned a homestead in this State has a direct impact on the amount of tax shelter provided. Thus, those who have been homesteading in Florida during the period of rapidly escalating property values have accumulated a tax shelter dating back for several years, measured by the difference between the assessed value and the 3% cap provided by SOHA. Under Amendment 1, this shelter is now "portable" and can be used when long-term Florida residents enter the market for Florida homes.

For a newly migrated resident who has recently bought a home but has not been a Florida resident for an appreciable period of time, the tax shelter is much less. Thus, this residency-based disparity in allotting the amount of benefits under SOHA and Amendment 1 is functionally identical to the residency disparity in the Alaska oil bounty scheme condemned in *Zobel v. Williams*, 457 U.S. 55 (1982).

The rationale of *Zobel*, coupled with the principles announced in *Saenz v. Roe*, 526 U.S. 489 (1999), require "strict scrutiny" in testing residency

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[2] Florida's homestead exemption, unlike SOHA and Amendment 1, contains no durational feature in any respect. Art VII., § 6, Fla. Const. (1968)

disparity in allotting tax benefits. By failing to address this standard, Respondents ignore the essence of the tax shelter scheme, which is inconsistent with fundamental holdings announced in *Zobel* and *Saenz*.

The Leon County Brief chides Petitioners for relying on Justice O'Connor's concurring opinion in *Zobel*. Leon County Brief pp. 12-14. Of course, Justice O'Connor was not entirely alone in her view. Justice Brennan's concurring opinion, joined by four other Justices, makes it clear that a majority of the Court in *Zobel* believed that the Alaska program offended the right to travel. Justice Brennan stated as follows:

> "I agree with Justice O'CONNOR that these more fundamental defects in the Alaska dividend-distribution law are, in part, reflected in what has come to be called the "right-to-travel." That right-or, more precisely, the federal interest in free interstate migration-is clearly, though indirectly, affected by the Alaska dividend-distribution law, and this threat to free interstate migration provides an independent rationale for holding that law unconstitutional.

Zobel, 457 U.S. at 66.

Nordlinger Was Not A "Right-To-Travel" Case That Required "Strict Scrutiny" Review.

All of the Respondents invite this Court to eschew certiorari jurisdiction based on Respondents' argument that *Nordlinger v. Hahn*, 505 U.S. 1. (1992), foreclosed any consideration of the right-to-travel issue here presented. However, Respondents fail to acknowledge that the right-to-travel issue was not presented in *Nordlinger* because of the absence of standing. *See* Petition page 25. Simply put, *Nordlinger* triggered only a "rational basis" standard under the Equal Protection Clause.

Because the right-to-travel issue is presented by this case, the Florida tax program giving greater benefit to long term homesteaders than to more recently arrived citizens requires strict scrutiny in accordance with the principles of *Saenz*. This Court should intervene when a state discriminates between long-term residents and newly arrived citizens in the grant of privileges (of a tax shelter) and immunities (from full assessment).

CONCLUSION

The Court should grant the Petition, reverse the Florida court's decision, and, if necessary, remand for further proceedings in which a standard of "strict scrutiny" is applied by the trial court.

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